UNITED
NATIONS

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Security Council

Distr.
GENERAL

S/1994/792
5 July 1994
ENGLISH
ORIGINAL: SPANISH

LETTER DATED 27 MAY 1994 FROM THE PRESIDENT OF THE GOVERNING COUNCIL OF THE UNITED NATIONS COMPENSATION COMMISSION ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

I have the honour to transmit, for the information of the Security Council, the following details concerning the thirteenth session of the Governing Council of the United Nations Compensation Commission, held from 24 to 26 May 1994.

At its 42nd plenary meeting on 26 May, the Governing Council, on the basis of proposals by the Secretary-General, appointed Commissioners for the Panel to review the consolidated claim submitted by the Central Bank of Egypt on behalf of 1,240,000 Egyptian workers.

The Commissioners thus appointed are the following:

Mr. Karl-Heinz Böckstiegel (Chairman)
Mr. Lazhar Bouony
Mr. Enrique P. Syquia

I transmit herewith document S/AC.26/1994/R.16 (annex I), which contains the text of the letter from the Executive Secretary to the President of the Governing Council regarding nominations for the Commissioners proposed by the Secretary-General, as well as their respective curricula vitae.

At the same plenary meeting, the Council considered the recommendations made by the Panel of Commissioners appointed to review the first instalment of claims for serious personal injury or death (category "B" claims) and decided to approve the said recommendations. The text of the corresponding decision (S/AC.26/Dec.20 (1994)) (annex II), is transmitted together with this letter, as well as the report containing the recommendations (S/AC.26/1994/1) (annex III).

The Council decided to accept the consolidated claims under categories "A", "B", "C" and "D" submitted by various Governments and international organizations after the time-limits established by the Council and asked the Secretariat to begin processing such claims after beginning the processing of claims submitted within the prescribed time-limits.

At the request of the Chairman of the Panel of Commissioners appointed to review individual claims for damage and injury up to a maximum of $100,000 (category "C" claims), the Council decided to extend until 5 September 1994 the period allowed for the Panel's submission of recommendations on the first instalment of such claims, in accordance with article 39 of the provisional rules for claims procedure.

The Council took note of a request from the Government of Egypt for more rapid processing and payment of claims under category "B", as well as of the information provided by the Secretariat to the effect that all claims in that category not included in the first instalment would form part of the second instalment. These claims would be processed as quickly as possible within the framework of the general system established for the urgent processing of all priority claims.

Finally, the Council endorsed a declaration by its President expressing the Commission's satisfaction at having secured approval for the payment of the initial instalment of claims and noting the importance of this achievement.

Representatives of Egypt, Iraq and Kuwait, which are not members of the Governing Council, expressed their wish to make statements during the session, and the Council invited them to do so at the 41st plenary meeting.

The next session of the Governing Council was set for the period from 17 to 21 October 1994.

(Signed) Fernando VALENZUELA MARZO
President
Governing Council
United Nations Compensation Commission

Annex I

[Original: English]

UNITED NATIONS
COMPENSATION COMMISSION
GOVERNING COUNCIL
Thirteenth session
Geneva, 24-27 May 1994

Letter dated 20 May 1994 from the Executive Secretary of the United Nations Compensation Commission addressed to the President of the Governing Council regarding nominations for Commissioners proposed by the Secretary-General*

On behalf of the Secretary-General I have the honour to transmit the following nominations of candidates for Commissioners for the Panel to review the consolidated claim submitted by the Central Bank of Egypt on behalf of 1,240,000 Egyptian workers:

Mr. Karl-Heinz Böckstiegel (Chairman)
Mr. Lazhar Bouony
Mr. Enrique P. Syquia

Enclosed are the curricula vitae of the candidates nominated.

All candidates have submitted disclosure statements in accordance with article 22 of the provisional rules for claims procedure (S/AC.26/1992/10). The disclosure statements will be distributed separately.

The panel will complete its review of the claims assigned to it (jurisdictional phase) and issue its report to the Governing Council pursuant to article 37 of the rules as soon as possible but no later than 120 days from the date the claims are submitted to the Panel.

(Signed) Carlos ALZAMORA
Executive Secretary

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* Originally issued as document S/AC.26/1993/R.16.

Appendix

Curricula vitae of candidates for the Panel of Commissioners to review the consolidated claim submitted by the Central Bank of Egypt

KARL-HEINZ BÖCKSTIEGEL

Nationality: German.

Born 2 August 1936.

Professor, Chair of International business law, and Director of the Institute of Air and Space Law, Cologne University.

Mediator, parties' counsel, arbitrator and president of arbitration tribunal in many international arbitration proceedings of the International Chamber of Commerce (ICC), International Centre for Settlement of Investment Disputes (ICSID), United Nations Commission on International Trade Law (UNCITRAL) and others.

President of the London Court of International Arbitration.

President of the Iran-United States Claims Tribunal, The Hague, 1984-1988.

Lectured in Argentina, Brazil, Canada, China, France, Japan, Lebanon, the Netherlands, Switzerland, the United Kingdom of Great Britain and Northern Ireland and the United States of America.

Author or editor of 35 books and many articles, especially on the protection of foreign investments, international legal procedure in civil and commercial matters, expropriation and nationalization measures, international commercial arbitration and other fields of international business law.

LAZHAR BOUONY

Nationality: Tunisian.

Born 2 April 1946.

Professor of international law at the Faculty of Law and Political Science of Tunis (Dean 1986-1990).

Associate Professor at the universities of Paris, Nice, Tolouse, Bologna and New York.

President of the Université du Centre.

Member of the Arab Commission of International Law.

Member of the Tunisian delegation to several sessions of the General Assembly of the United Nations (Sixth Committee).

Counsel of the Tunisian Government in the case of the Continental Shelf (Tunisia/Libyan Arab Jamahiriya) before the International Court of Justice.

Author of several publications on subjects of international law.

ENRIQUE P. SYQUIA

Nationality: Philippine.

Born 22 May 1930.

Doctor of Laws, University of Madrid.

Professor of Law since 1956 and Full Professor of Law since 1976.

Permanent Vice-President, International Law Association.

Chairman, Commercial Arbitration Association of the Philippines.

Author or editor of various books and many articles on law, specially international law and relations.

Member and/or officer of numerous international law organizations.

Annex II

[Original: English]

UNITED NATIONS
COMPENSATION COMMISSION
GOVERNING COUNCIL

Decision concerning the First Instalment of Claims for Serious Personal Injury or Death (category "B" claims) taken by the Governing Council of the United Nations Compensation Commission at its 43rd meeting, held on 26 May 1994 at Geneva*

The Governing Council,

Having received, in accordance with article 37 of the provisional rules for claims procedure, the first report of the Panel of Commissioners appointed to review individual claims for serious personal injury or death (category "B" claims), covering 1,119 individual claims, 1/

1. Approves the recommendations made by the Panel of Commissioners, and, accordingly;

2. Decides, pursuant to article 40 of the rules, to approve the amounts of the recommended awards concerning the 670 claims listed in annex I of the report;

3. Decides that the following amounts be paid with respect to those awards as listed below:

Country	Consolidated claim number	Amount (US$)
Australia	AU/00027/01B	2 500
China	CN/00148/01B	5 000
Slovakia 2/	CZ/00085/01B	2 500
France	FR/00070/01B	37 500
	FR/00127/02B	15 000
Iran (Islamic Republic of)	IR/00063/01B	2 500
Jordan	JO/00103/01B	982 500
Kenya	KE/00105/01B	2 500
Kuwait	KW/00007/01B	95 000
	KW/00014/02B	80 000
	KW/00144/03B	1 222 500
Mauritius	MU/00080/01B	2 500

* Originally issued as document S/AC.26/Dec.20 (1994).

Country	Consolidated claim number	Amount (US$)
Pakistan	PK/00024/01B	22 500
Poland	PL/00116/01B	10 000
Sri Lanka	LK/00109/01B	110 000
Thailand	TH/00095/01B	10 000
United Kingdom	GB/00019/01B	22 500
	GB/00055/02B	10 000
	GB/00071/03B	10 000
	GB/00102/04B	32 500
	GB/00131/05B	15 000
	GB/00161/06B	17 500
United States	US/00006/01B	7 500
	US/00040/02B	15 000
	US/00097/03B	12 500
F.R. Yugoslavia 3/	YU/00008/01B	2 500
TOTAL		2 747 500

4. Recalls that, pursuant to decision 18 (S/AC.26/Dec.18 (1994)), amounts paid in respect of approved awards to the individuals listed in annex I of the report are to be distributed to those individuals by the Governments or appropriate authorities concerned, and that a report must be submitted on such distribution not later than nine months after receipt of the funds by the Governments or appropriate authorities;

5. Decides that no compensation be awarded concerning the 307 claims listed in annex II of the report;

6. Notes the transfer by the Executive Secretary of the 88 claims listed in annex III of the report to the Panel of Commissioners appointed for category "C" claims;

7. Notes that no recommendation has been made at this stage for 54 claims, listed in annexes IV and V of the report;

8. Requests that the Executive Secretary provide copies of the report and the relevant parts of the annexes to the report to the Secretary-General and to the respective Governments, and reminds these Governments of their obligation to take the appropriate measures to preserve the confidentiality of annexes I to V.

Notes

1/ The text of the report is attached hereto (document S/AC.26/1994/1) (see annex III). In conformity with the provisions on confidentiality in the rules (arts. 30, para. 1, and 40, para. 5), annexes I to V to the report (S/AC.26/1994/R.8/Add.1/Rev.1) will not be made public.

2/ The claims were initially submitted by the Czech and Slovak Federal Republic. The award of compensation is to be paid to the Government of Slovakia.

3/ Federal Republic of Yugoslavia (Serbia and Montenegro).

Annex III

UNITED NATIONS
COMPENSATION COMMISSION
GOVERNING COUNCIL

RECOMMENDATIONS MADE BY THE PANEL OF COMMISSIONERS CONCERNING INDIVIDUAL CLAIMS FOR SERIOUS PERSONAL INJURY OR DEATH (CATEGORY "B" CLAIMS)*

* Originally issued as document S/AC.26/1994/1.

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Breakdown of the recommendations by individual claim by country

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ANNEX IV*

Eligible claims for which no compensation is recommended at this stage

ANNEX V*

Claims for which additional information has been required

ANNEX VI**

Summary of recommendations and decisions

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* contained in document S/AC.26/1994/R.8/Add.1/Rev.1 (restricted distribution).
** attached hereto.

INTRODUCTION

This is the first report that the Panel of Commissioners appointed for claims in category "B" submits to the Governing Council of the United Nations Compensation Commission (the "Commission") in accordance with article 37(e) of the Provisional Rules for Claims Procedure (the "Rules")[1].

The Panel was appointed by the Governing Council on 31 March 1993 upon nomination by the Secretary-General of the United Nations on the basis of recommendations made by the Executive Secretary of the Commission[2]. The task of the Panel is to examine claims for serious personal injury and death in category "B" submitted to the Commission and to make recommendations to the Governing Council[3].

The Panel held two preparatory working meetings with the secretariat of the Commission on 19-20 July and 13 December 1993 to discuss the methodology and procedures used by the secretariat in the processing of category "B" claims and to organize the work of its substantive sessions. The Executive Secretary delivered the claims with an article 32 report to the Panel on 14 December 1993, along with the information and views submitted by the Governments that have submitted claims and the Government of Iraq. The Panel commenced its work of reviewing claims at its first substantive session held from 14 to 17 December 1993. Subsequent sessions were held from 11 to 14 January, 15 to 18 February, 1 to 5 March, 21 to 25 March and 13 to 14 April 1994. All the preparatory meetings and the substantive sessions were held in Geneva at the headquarters of the secretariat and were conducted in private[4].

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[1] Article 37(e) requires that "[e]ach Panel will report in writing through the Executive Secretary to the Governing Council on the claims received and the amount recommended to be allocated to each Government or other entity for each consolidated claim. Each report will briefly explain the reasons for the recommendations and, to the extent practicable within the time-limit, contain a breakdown of the recommendations in respect of individual claims within each consolidated claim."

[2] Rules, article 18, para. 1.

[3] Rules, article 32, para. 1.

[4] Rules, article 30, para. 2; and article 33, para. 2.

In the course of those sessions, the Panel reviewed claims in category "B" contained in the first instalment prepared by the secretariat. The first instalment consists of all claims in category "B" that were filed with the Commission by 31 March 1993 and that have been found to meet all the formal requirements set forth in article 14 of the Rules. A breakdown of 1,119 claims in the first instalment is contained in Part IV, infra.

Category "B" claims are claims for the payment of fixed amounts to any person who, as a result of Iraq's unlawful invasion and occupation of Kuwait, suffered serious personal injury, or whose spouse, child, or parent died. Category "B" claims have been considered by the Governing Council to be among "the most urgent claims" for which the Council has set forth "simple and expedited procedures" in order to provide "prompt compensation in full" or "substantial interim relief"[5].

This report is divided into four parts. Part I describes the methodology used by the secretariat for the processing of claims, utilizing procedures as established in the decisions of the Governing Council. This Part also provides an explanation of the methodology by which the Panel examined the claims. Part II describes the main legal issues raised by the claims contained in the first instalment, and the conclusions that the Panel has drawn with respect to those issues. Part III elaborates upon the standards of evidence that the Panel has applied in recommending compensation for a claim. Part IV states the recommendations made in respect of the claims, including the amounts recommended to be allocated to each Government for each consolidated claim. Annexes to this report provide a breakdown of the amounts to be awarded to each individual claimant within each consolidated claim.

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[5] Decision 1, para. 1.(S/AC.26/1991/1).

I . METHODOLOGY

A. Processing of claims by the secretariat

Category "B" claims have been submitted on the standard claim forms prepared and distributed by the secretariat. Governments and other authorized persons, authorities and bodies[6] have submitted claims on behalf of individuals in the form of consolidated claims. When a consolidated claim was received from a Government or other authorized entity[7], the Registry of the secretariat determined whether the claim was submitted within the established time-limit, registered the claim, assigned a number to the claim and issued a "Filing Receipt".

The Registry then verified that the claims received met all the formal requirements listed in para. 1 of article 14 of the Rules. Governments or authorized entities that submitted claims not meeting the formal requirements were so notified and given 60 days to correct any deficiencies.

Concurrent with the article 14 review, the secretariat analyzed the claims received for the purposes of preparing a report pursuant to article 16 of the Rules[8]. These reports, containing information on the claims received during the period covered, addressed the significant legal and factual issues raised by the claims submitted. The article 16 reports

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[6] In accordance with Decision 1, para. 19, the Governing Council may request an appropriate person, authority or body to submit claims on behalf of persons who are not in a position to have their claims submitted by a Government.

[7] For example, the United Nations Development Programme and the United Nations High Commissioner for Refugees have submitted claims on behalf of individuals.

[8] Rules, article 16, para. 1: "The Executive Secretary will make periodic reports to the Governing Council concerning claims received. These reports shall be made as frequently as required to inform the Council of the Commission's case load but not less than quarterly. The reports shall indicate: a) Governments, international organizations or other eligible parties that have submitted claims; b) the categories of claims submitted; c) the number of claimants in each consolidated claim; d) the total amount of compensation sought in each consolidated claim. In addition, each report may indicate significant legal and factual issues, raised by the claims, if any."

were then circulated to the members of the Governing Council, to all Governments that submitted claims to the Commission and to the Government of Iraq. Each of these Governments was entitled to present to the Executive Secretary, for transmission to the Panel, additional information and views concerning the issues raised in the reports .

After the article 16 reports were issued, the information on the claim forms was entered by the secretariat into a computerized database for the purposes of grouping and categorizing the claims. Each claim that was entered into the computerized database was assigned a unique "UNCC Claim Number". The secretariat ran a computer check for each individual claim to verify whether an individual had submitted more than one claim within category "B" for the same injury or death. The secretariat will also run a computer check to verify whether a person is claiming for the higher amount in category "A" (claims for departure), which excludes such a claimant from putting forward claims in any other category[10].

With the assistance of the computer program, category "B" claims that had common legal and factual issues were listed. Claims with significant common legal and factual issues were physically grouped together by the secretariat so as to facilitate the review of claims by the Panel. The secretariat then analyzed the claims within each grouping on a case-by-case basis for the purposes of preparing the claims for submission to the Panel. When a grouping with numerous claims was identified, sample cases that were representative of the grouping were presented to the Panel pursuant to article 37

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[9] Rules, article 16, para. 3: "Within 30 days in case of claims in Categories A, B, ,C; and 90 days in case of claims in other categories, of the date of the circulation of the Executive Secretary's report, the Government of Iraq as well as Governments and international organizations that have submitted claims, may present their additional information and views concerning the report to the Executive Secretary for transmission to panels of Commissioners in accordance with Article 32. There shall be no extensions of the time limits specified in this paragraph."

[10] When processing category "C" or "D" claims, the secretariat will also run a computer check to verify whether a person who is claiming for personal injury or death on Forms "C" or "D", has also claimed for interim relief on Form "B".

(b) of the Rules and in accordance with the methodology agreed to by the Governing Council.

The preparation of the claims by the secretariat included, inter alia, the translation of particularly relevant documents (e.g., certificates of death), the writing of a summary stating the factual and legal issues for each of the claims and a preliminary examination of the claims by an experienced medical expert[11] that the Executive Secretary appointed to assist the Panel and the secretariat in the review of category "B" claims. The secretariat then verified manually that the claims had been properly grouped by the computer according to the pertinent legal or factual issues in the claim. This method of processing ensured more accurate groupings than those resulting from the initial use of the computer alone, served to establish new groupings, and tended to limit the marginal variations among the claims within the same grouping.

In order to assist the Panel in its review of the claims, the secretariat submitted the claims with a report pursuant to article 32 of the Rules. Article 32 provides that the Executive Secretary submits to the Panel the claims together with the related documentation, containing the results of the preliminary assessment made by the secretariat with respect to the formal requirements of the claims, and any other information deemed to be useful for the work of the Commissioners, as well as the additional information and views submitted by Governments and international organizations that have submitted claims and the Government of Iraq, in accordance with article 16 of the Rules.

B. Review of the claims by the Panel

The Panel examined the claims submitted to it in this first instalment to determine whether they meet the legal and evidentiary requirements established by the Governing Council and to make recommendations to the Governing Council on the amounts of awards to be allocated to each Government and individual claimant.

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[11] Dr. Marcel Dubouloz, former Deputy Medical Director of the Medical Division of the International Committee of the Red Cross, Secretary General of the International Society of Disaster Medicine.

The Panel requested the secretariat, in accordance with article 34 of the Rules, to assist it on a continuous basis during the sessions. The secretariat staff members attended all the sessions of the Panel and provided information as required. When necessary, the Commission's medical expert assisted the Panel. The claims were grouped by the secretariat on the basis of factual and legal issues. Some of the groupings were presented to the Panel fully or on a sample basis, but at all times, the Panel retained the option of reviewing the claims on a case-by-case basis. The groupings were separated into two categories: claims for serious personal injury and claims for death. In instances where a claimant filed a claim for a serious personal injury and for the death of a relative in the same claim form, such a claim was then presented twice to the Panel.

When presented with the sample claims of a particular grouping, the Panel determined what elements were required for a claim to be approved. The secretariat then verified that those elements were present in the remaining claims of the grouping that had not been individually reviewed by the Panel. The results of this verification were reported back to the Panel. When there was any doubt about the presence of the required elements in particular claims reviewed by the secretariat, such claims were submitted to the Panel for assessment on a case-by-case basis. Finally, the Panel decided on its recommendations to the Governing Council.

The method of sampling was not applied to all groupings. In view of the characteristics of some of the groupings, the Panel chose to review all the claims contained in them on a case-by-case basis.

In making its recommendations to the Governing Council, the Panel applied Security Council resolution 687 (1991) and other relevant resolutions of the Security Council, Governing Council Decision 1 (Criteria for Expedited Processing of Urgent Claims), Decision 3 (Definition of Personal Injury and Mental Pain and Anguish)[12], Decision 10 (Provisional Rules for Claims Procedure)[13], Decision 11 (Eligibility for Compensation

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[12] S/AC.26/1991/3.

[13] S/AC.26/1992/10.

of Members of the Allied Coalition Armed Forces[14] and Decision 12 (Claims for Which Established Filing Deadlines Are Extended)[15] and other applicable rules of international law[16].

The Panel took into account the information provided by the Executive Secretary in the article 32 report accompanying the submission of this first instalment of claims to the Panel, the reports presented to the Governing Council in accordance with article 16 of the Rules (Reports 1 to 6), all additional information and views presented by Governments that have submitted claims and the Government of Iraq in response to those reports, letters and reports presented by Governments that submitted category "B" claims that provide background information related to their consolidated claims, and relevant United Nations reports[17] as well as other sources.

The Panel adopted this report, including the recommendations to the Governing Council, by unanimity.

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[14] S/AC.26/1992/11.

[15] S/AC.26/1992/12.

[16] Rules, article 31.

[17] Report to the Secretary-General by a United Nations mission, led by Mr. Abdulrahim A. Farah, former Under-Secretary-General, Assessing the Scope and Nature of Damage Inflicted on Kuwait's Infrastructure During the Iraqi Occupation of the Country from 2 August 1990 to 27 February 1991 (S/22535, dated 22 April 1991), (the Farah Report); Report on the Situation of Human Rights in Occupied Kuwait, prepared by Mr. Walter Kälin, Special Rapporteur of the United Nations Human Rights Commission (E/CN/1992/26 dated 16 January 1992), (the Kälin Report).

II. LEGAL ISSUES

The legal issues raised by the claims in the first instalment are examined under two main aspects: A) jurisdiction, and B) attribution of the losses and damages to Iraq.

A. Jurisdiction

The claims before this Panel are claims for fixed amounts by individuals who have suffered serious personal injury or whose spouse, child or parent died, as a direct result of Iraq's unlawful invasion and occupation of Kuwait.

1. Ratione temporis (the relevant time period)

The period between 2 August 1990 and 2 March 1991, referred to in Decision 1 of the Governing Council, has considerable significance for the purpose of verification of claims arising from Iraq's invasion and occupation of Kuwait. 2 August 1990 marks the date that Iraq's troops invaded Kuwait. 2 March 1991 is the date upon which the Security Council adopted resolution 686 (1991) which took note of the suspension of combat operations by Kuwaiti forces and the Member States cooperating with Kuwait. Most of the situations generating Iraq's responsibility that are listed in Governing Council Decision 1, para. 18 must have occurred during that period.

Thus, in principle, a serious personal injury or death should have occurred between 2 August 1990 and 2 March 1991 to be attributable to Iraq's activities associated with its invasion and occupation of Kuwait. The occurrence of a serious personal injury or death outside that time-frame imposes, in general, an extra burden on a claimant to provide an explanation as to why such an injury or death occurring outside this time-period should be considered a direct result of Iraq's invasion and occupation of Kuwait.

Several claims were submitted for serious personal injury or death that occurred outside the relevant time period, where the cause of the injury or of the death could indeed be linked to the invasion. For example, in some instances an injury suffered during the period of the invasion and occupation of Kuwait was the cause of a death that occurred after 2 March 1991, or the lack of medical care in Kuwait during that period

contributed to a serious personal injury or to a death occurring outside that time frame. The Panel has recommended compensation for such claims if satisfactory evidence of a link of the serious personal injury or death to the invasion or occupation of Kuwait was submitted.

A particular issue arose in this context with respect to claims for losses that occurred outside the relevant time period in connection with mine explosions. The Panel had before it several claims for serious personal injury or death caused by the explosion of mines and other ordnance that occurred after 2 March 1991. According to a United Nations report, there were several million mines and other pieces of unexploded ordnance in Kuwait at the end of the occupation. That report stated that "the most lasting environmental problem facing Kuwait will be that of mines and other unexploded ordnance"[18]. Being aware of the long lasting effects of this problem, the Governing Council in Decision 12 extended the deadline for the filing of claims for losses and personal injuries resulting from public health and safety risks that occurred after or just prior to the expiration of the established filing deadlines[19]. The Panel interprets this Decision to mean that a claim for serious personal injury or death resulting from a mine explosion should be compensated even if that explosion occurred after 2 March 1991.

Moreover, the Panel had before it a large number of other claims where the injury or death occurred after 2 March 1991 that raised the question of the imputability of losses and damages to Iraq[20].

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[18] Farah Report, para. 538.

[19] This includes injuries suffered from the emanations of burning oil wells, see Part III, section B, item 2 infra.

[20] See Part II, section B, item 5, infra.

2. Ratione personae (eligible claimants)

The legal issues related to the competence of the Commission with respect to persons can be examined on the basis of Governing Council Decisions 1, 11 and 12, and concern the following groupings: exclusion of claims by Iraqi nationals; claims submitted by/for members of the Kuwaiti Armed Forces or members of the Allied Coalition Armed Forces; claims submitted for detained persons; family members eligible to submit claims for death; claims submitted by a third person.

a) Exclusion of claims by Iraqi nationals

Governing Council Decision 1, para. 17 states that: "Claims will not be considered on behalf of Iraqi nationals who do not have bona fide nationality of any other State". The first instalment contained no claim submitted by an Iraqi national. In instances where there was some doubt as to the nationality of the claimant, the Panel checked the identity documents found in the claim, and took into account the affirmations provided by the respective Government pursuant to article 14 para.1(c) of the Rules[21].

b) Claims submitted by/for members of the Kuwaiti Armed Forces or the Allied Coalition Armed Forces

Decision 11 of the Governing Council states that

" ...members of the Allied Coalition Armed Forces are not eligible for compensation for loss or injury arising as a consequence of their involvement in Coalition military operations against Iraq, except if the following three conditions are met:
(a) the compensation is awarded in accordance with the general criteria already adopted; and
(b) they were prisoners of war as a consequence of their involvement in Coalition military operations against Iraq in response to its unlawful invasion and occupation of Kuwait; and
c) the loss or injury resulted from mistreatment in violation of international humanitarian law (including

[21] Article 14, para. 1(c) states that a Government submitting claims must affirm "that, to the best of the information available to it, the claimants are its nationals or residents, and that it has no reason to believe that the information stated in the claims is incorrect."

the Geneva Conventions of 1949)".

The organization of the Allied Coalition Armed Forces began a few days after the occupation of Kuwait by Iraq, and continued with the placement of armed forces and air and naval military units from 28 countries, including Kuwait, in the Persian Gulf region.

Among the claims submitted for serious personal injury or death suffered by members of the Kuwaiti Armed Forces, several were put forward for events that occurred during the day of the invasion (2 August 1990) or during the days immediately following. The Panel concludes that the exclusion from compensation stated in Decision 11 is not applicable to these claimants because the Allied Coalition Armed Forces did not exist at that time. In the Panel's view, these claims are compensable since the serious personal injury or death was the direct consequence of Iraq's invasion and occupation of Kuwait.

Claims were also submitted with respect to serious personal injury or death suffered by Kuwaiti military personnel, including members of the Kuwaiti resistance, at the end of the relevant time period. The Panel considers that the exclusion from compensation stated in Decision 11 of the Governing Council is applicable only to members of the Kuwaiti Armed Forces that were integrated as units under the command of the Allied Coalition Armed Forces. For this reason, Decision 11 is not applicable to Kuwaiti members of the resistance or other military personnel who remained within Kuwaiti territory and suffered personal injury or death due to the Iraqi invasion and occupation of Kuwait. Therefore, the Panel recommends the payment of compensation also in these cases.

c) Claims submitted for detained persons

The Panel had before it claims filed on behalf of persons who are asserted to be still in detention in Iraq. All of these claims were submitted for serious personal injury on behalf of Kuwaiti nationals by the Kuwaiti Government. The issue presented by these claims is whether a claim can be submitted on behalf of a person who is presumed to be detained, for a serious personal injury allegedly suffered by the detainee himself/herself.

The Governing Council has established special guidelines for the submission of claims for losses and personal injuries resulting from detention in Iraq. Decision 12, para. 1 (b) states that such claims "should be submitted to the Commission within one year of the detainee's release...but not later than the time limit to be established pursuant to para. 2 of this decision"[22]. Therefore, the Panel concludes that a claim for serious personal injury suffered by a person who was held in detention by the Government of Iraq has to be filed by the detainee, within one year of his/her release.

The Governing Council has also foreseen the possibility that these persons may in fact be deceased in which case, according to the same Decision, the claims "should be submitted to the Commission within one year...of the death of the detainee, as legally determined by the detainee's Government, but no later than the time limit to be established pursuant to para. 2 of this decision."[23] Once the detainee's Government has determined that the detainee is deceased, then a claim may be submitted by his/her family for his/her death.

Thus, Decision 12 institutes two courses of action in the case of claims of or on behalf of detainees: either the detainee submits a claim for serious personal injury, or the detainee's Government declares the detainee to be deceased, in which case the family of the deceased may submit a claim for death.

The Panel concludes that these claims submitted by third parties for the serious personal injury of detainees cannot be considered for compensation at this stage. Compensation, if any, would be awarded for claims for serious personal injury submitted by the detainee personally after his/her release, or for claims for death submitted by the family after it has been

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[22] Decision 12, para. 2: "When the Executive Secretary determines that the processing of all remaining claims before the panels of Commissioners is likely to take no more than one year to complete, he should so notify the Governing Council. The Governing Council should thereupon establish the final time limit for the submission of claims covered by paras. 1(a) and 1(b) of this decision. The Governing Council should establish the final time limit at its next meeting after receiving such notification and should allow at least three additional months from the date of its decision for the filing of the claims."

[23] Idem.

determined by the detainee's Government that the detainee is deceased.

d) Missing persons

Some death claims were submitted by families for relatives who seemingly disappeared during the invasion and occupation of Kuwait by Iraq. These families made inquiries, or tracing requests to the International Committee of the Red Cross, but were unable to locate their relatives. The Panel recommends that compensation be awarded where from the documentation submitted it could be presumed that the "missing" person is deceased.

In instances where it could not conclude that the "missing" person is deceased, the Panel holds that compensation cannot be recommended at this stage and that a new claim can be submitted if the family ever receives confirmation of the death.

e) Family members eligible to submit death claims

Decision 1, para. 13 states that "no more than $10,000 will be paid for death...with respect to any one family (consisting of any person and his or her spouse, children and parents)". The Panel interprets this definition of family to exclude death claims put forward by other relatives such as brothers or sisters, grandchildren, grandparents, nieces, nephews or uncles and aunts of the deceased.

In reviewing the claims for death it became apparent that the concept of "family" was being interpreted differently by both claimants and Governments in various countries. The issue as a whole was raised in the following manner in an article 16 Report:

> "...in circumstances where compensation is claimed for death ... relating to a family member, there is an issue as to whether included in the terms parents, child or spouse are, e.g., adopted children, foster parents, wards, guardians and other legally cognizable family relationships under the laws of various countries. A related issue is whether the age of children, marital status, or other factors should affect the eligibility for compensation and/or the ceilings in respect of claims for death ... relating to a parent, child or spouse".

The Panel considered the comments made on this issue by some Governments, including the Government of Iraq.

The first issue that arose with respect to determining what constitutes a family was whether the age of children, marital status, or other factors should affect the eligibility of claimants for compensation. The Panel examined all the available documentation, including the decisions of the Governing Council, the article 16 reports and the Government responses to the article 16 reports, including that of the Government of Iraq, and came to the conclusion that the age of children, marital status or other factors should not affect the eligibility for compensation. The Panel holds that Decision 1 should be applied without any limitation with respect to the age or marital status of the family member.

The second issue that arose with respect to the definition of family was whether the terms "parent" or "child" include adopted children, foster parents, wards, guardians and other legally cognizable family relationships under the laws of various countries. Decision 1 does not contain any further definition of the terms "parent" or "child", and taking into account the comments and views made by Governments in response to this issue as raised in article 16 reports, the Panel finds it appropriate, in conformity with general principles of private international law, to apply to each claimant his or her own national law in interpreting these terms. Where national laws accord a claimant legal rights similar to those accorded to a biological parent or child, the claimant will be treated as a biological parent or child for the purposes of the processing of the claims in category "B".

A third issue faced by the Panel was whether, for example, in the event of a man's death, his wife and minor children could claim as a family unit, his adult children could each claim as separate family units, and the deceased's parents could claim as yet a third family unit, to each of which the ceiling of US$10,000 would apply. For the purpose of applying the ceiling, the Panel determines that the word "person" in Decision 1, para. 13, means the deceased in the case of death. Thus the Panel concludes that the "family" is composed of the deceased (whose death is to be compensated), his or her parents, all of his or her children, and his or her spouse. Accordingly, the Panel finds that it is not possible to consider different units inside the family for the purpose of the application of the US$10,000 ceiling to claims in category "B".

However, Decision 1 does not refer to the particular situation where the deceased has more than one legally recognized wife, as is the case in some claims. The Panel, taking into account this particular situation, considers that each wife and the children born from that union constitute a separate family unit for the purpose of applying the US$10,000 ceiling. For instance, if a man had more than one wife, each of the wives and her respective children constitute a separate family and the ceiling of US$10,000 can be applied to each. For the purpose of compensation, the parents of the deceased are considered a part of the family of the deceased as a whole.

f) Claims submitted by a third person

In a few cases, claims for serious personal injury were submitted by someone other than the injured person himself/herself, for example, a parent, sibling, relative, or even a person not belonging to the claimant's family. The Panel holds that, as a general rule, no one but the injured person himself/herself is entitled to claim for a serious personal injury.

This rule, however, must be applied taking due account of the circumstances of each particular case. Some persons are to be considered legally entitled to claim on behalf of others, e.g., a parent for a minor child, or any person acting either under a power of attorney received from the injured person or pursuant to a court decision. The Panel also considers a third person entitled to claim on behalf of an injured person when it has found adequate evidence in the claim that the injured person was in no position to claim him/herself, and when in addition a sufficient link existed between the two (e.g., parent and adult child, husband and wife). In all such cases, the Panel recommends that the compensation be awarded only to the injured party, and not to the person who submitted the claim.

The situation is different when a claim for injury is submitted by the executor of the estate of a deceased person who had suffered a serious personal injury, when there was no link, alleged or probable, between the death and the injury. In the Panel's view, an executor of an estate is not eligible to claim for an injury suffered by the deceased, since the right to claim belongs only to the injured person himself/herself. If the deceased had filed a claim for injury before his/her death, then the claim would likely have been part of the estate that the executor administers. But in the

claims at issue, the deceased had not claimed for serious personal injury before his/her death. Consequently, the executor cannot claim for the payment of an obligation that, at the time of the death of the injured person, had not yet arisen.

3. Ratione materiae (subject matter jurisdiction)

The subject matter jurisdiction of the Commission for category "B" claims is defined in Governing Council Decisions 1, 3, 8, and 11. These decisions establish what type of injuries or deaths are compensable. Category "B" claims should have been filed only for a serious personal injury suffered by the claimant, or for the death of a claimant's parent, spouse or child, directly resulting from Iraq's invasion and occupation of Kuwait.

a) Definition of serious personal injury

In accordance with the relevant Governing Council Decisions, the Panel determines that it cannot recommend compensation for personal injuries it does not consider serious. "Serious personal injury" has been defined in Decision 3 to mean

> "(a) Dismemberment;
> (b) Permanent or temporary significant disfigurement, such as a substantial change to one's outward appearance;
> (c) Permanent or temporary significant loss of use or limitation of use of a body organ, member, function or system;
> (d) Any injury which, if left untreated, is unlikely to result in the full recovery of the injured body area, or is likely to prolong such full recovery."

It is further stated in Decision 3 that

> "[s]erious personal injury does not include the following: bruises, simple strains and sprains, minor burns, cuts and wounds; or other irritations not requiring a course of medical treatment."

Where, on the basis of the evidence, an injury is not considered serious, the Panel does not recommend compensation. The Commission's medical expert provided advice to the Panel as to whether an injury would or would not require a course of medical treatment. On the basis of his advice, and given the

other elements found in the claim, a number of claims are not recommended for compensation on the grounds that the injury was not serious.

b) Claims erroneously filed as death claims

In some cases, claims were submitted for death but raised the issue as to whether they should have been presented for a serious personal injury. These claims were related to miscarriages, abortions and stillbirths.

A related issue was raised in the article 16 reports as follows:

> "Several claims have been brought for death of new-born babies or for premature deliveries due to the conditions prevailing in Kuwait during Iraq's invasion and occupation. Unwanted or forced abortions allegedly due to the conditions during the invasion and occupation are also referred to as the cause for serious personal injury or death claims".

The Panel took into account comments made by some Governments, including the Government of Iraq.

The Panel reviewed such claims on a case-by-case basis and sought advice from the Commission's medical expert. The Panel came to the following conclusions with respect to such claims:

- a pregnant woman was more vulnerable than other people to the difficult conditions resulting from the Iraqi invasion and occupation of Kuwait and their traumatizing effects, including the lack of medical care during this period, and the difficulty in receiving specialized care. Such conditions could well have severely impacted on the health of a pregnant woman or of a new-born;
- a miscarriage, an abortion or a stillbirth is considered, for the purposes of compensation, as a serious personal injury suffered by a woman.

However, if a new-born suffered a serious personal injury or died because of a premature delivery[24], a claim could be filed for the serious personal injury of the child or his/her death.

c) Claims erroneously filed as injury claims

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[24] According to the medical expert, a delivery is generally considered premature from the end of the 26th week until the end of the 32nd week of pregnancy.

Decision 3 of the Governing Council establishes a distinction between "serious personal injury" (which includes both physical and mental injuries) and "mental pain and anguish". The Commission's medical expert advised that "in the medical semiology, psychological trauma is an injury which is more serious than mere psychological pain or anguish". However, the claims filed in category "B" showed that the difference between a "mental injury" and "mental pain and anguish" is often difficult to ascertain. Indeed, many claimants were not aware of this distinction as can be seen from the terminology they used in filling Form B. They often used the term "mental pain and anguish" when, in fact, the symptoms they were describing corresponded to a mental injury such as "Post-Traumatic Stress Disorder". In cases where the claimant submitted evidence proving the existence of a mental injury and its direct relation to Iraq's invasion and occupation of Kuwait, the Panel recommends the payment of compensation, irrespective of the words used on the claim form.

On the other hand, a claim for "mental pain and anguish" should not be put forward under category "B", but rather should be made under either categories "C" or "D". Under category "B", to be eligible for compensation for serious personal injury, a claimant must demonstrate that he or she has suffered a physical or mental injury. On 26 October 1992 and 19 March 1993 the secretariat sent letters to all Governments emphasizing that they "should advise claimants to refrain from presenting category 'B' claims that are based only on the fact of hiding or detention and do not demonstrate physical or mental injuries". In order to deal with the claims for mental pain and anguish that were submitted as category "B" claims, the secretariat proposed to Governments either to withdraw these claims and resubmit them under either forms "C" or "D", or to authorize the secretariat to "transfer" such claims from the Panel dealing with the category "B" claims to the panels that deal with "C" or "D" claims. A number of Governments modified their submissions by either withdrawing or requesting the transfer of the claims for mental pain and anguish submitted on claim forms "B".

However, several claims for mental pain and anguish were not withdrawn or transferred, and they therefore came before this Panel for review. In view of the fact that such claims were submitted by the claimants on the wrong claim forms, the Panel decided to request the Executive Secretary to reallocate those claims to the Panel of Commissioners dealing with

category "C" claims, in accordance with article 32, para. 3 of the Rules.

The Panel also had before it a number of claims where claimants did not indicate whether their claims were for "mental injury" or for "mental pain and anguish". Since these claimants did not present evidence of the mental injury, the Panel decided to request the Executive Secretary to also reallocate these claims to the Panel of Commissioners dealing with category "C" claims so that Panel "C" can determine whether the claimants were seeking compensation for mental pain and anguish, although they may not have used this expression on their claim forms.

4. Ratione loci (relevance of the place of the loss)

With respect to claims submitted for serious personal injury or death, nothing in either Security Council resolution 687 (1991) or in the decisions of the Governing Council establishes jurisdictional limitations based on where the event causing the loss took place.

In reviewing the question as to whether the location of the event affects the Commission's jurisdiction over a claim, the Panel first considered the wording of resolution 687 (1991), that refers to "any direct loss, damage..." resulting from Iraq's invasion and occupation of Kuwait, without specifying where such loss or damage should have occurred. The Panel also noted para. 18 (d) of Decision 1, where the Governing Council explicitly envisaged as a cause of damage the breakdown of civil order in Kuwait or Iraq during the relevant period.

The Panel concludes that the Commission has jurisdiction over a claim irrespective of where the serious personal injury or death occurred. The place of the event is not in itself a basis to determine whether the Commission is competent or not. However, the Panel finds that where a serious personal injury or death occurred in Iraq or Kuwait, this can more easily be attributable to Iraqi actions, whereas a claim based on an incident occurring outside Kuwait or Iraq needs to be more fully substantiated.

B. Attribution of losses and damages to Iraq

Resolution 687 (1991) of the Security Council establishes the principle of Iraq's liability "for any direct loss, damage (...) as a result of Iraq's unlawful invasion and occupation of Kuwait". Although the cause of a serious personal injury or death is clear in some instances such as where a person was killed or injured by an Iraqi soldier during the occupation, the direct link between the invasion and a serious personal injury or death is not so clear in other instances. The issue of the attribution to Iraq of the alleged serious personal injury or death was raised in a number of cases that have been grouped as follows.

1. Traffic accidents

The Panel had before it a number of claims where the alleged cause of an injury or death was a road traffic accident. This issue was raised in article 16 reports in the following terms:

> "The issues of foreseeability and remoteness of losses from Iraq's invasion and occupation of Kuwait are raised by situations in which (persons) died, were injured or suffered financial losses in automobile or other accidents that occurred while (they) were in the process of departing from Iraq or Kuwait. Some of these accidents occurred while the claimants were travelling through neighbouring countries."

The Panel considered additional information and views presented on this matter by Governments, including the Government of Iraq.

The Panel concludes that the decision on such a claim depends on the particular circumstances of the event, such as whether the accident involved an Iraqi military vehicle, the date on which it occurred, its location, how it happened, and the documentation supporting the claim.

In this respect, a distinction must be made between "military" accidents and other road traffic accidents. Due to the circumstances prevailing at the time of the invasion and occupation of Kuwait by Iraq, the Panel is of the view that in principle all accidents involving an Iraqi military vehicle were a direct consequence of the invasion. The Panel considers

such accidents to be the result of "actions by officials, employees or agents of the Government of Iraq or its controlled entities during that period [2 August 1990 to 2 March 1991] in connection with the invasion or occupation", or of "the breakdown of civil order in Kuwait or Iraq during that period"[25]. The Panel further concludes that "military accidents" could also be the result of a military action, such as an air raid that caused a driver to lose control and flip the car, or the chasing by Iraqi Forces of a Kuwaiti vehicle.

Other road traffic accidents are not considered directly linked to the invasion and occupation of Kuwait, unless they meet a number of additional criteria. One of these criteria is the date of the accident. An accident occurring on the first day of or on the days immediately following the invasion of Kuwait is found to be related to the "breakdown of civil order". The Panel also determines that a similar situation exists with respect to an accident occurring just before 2 March 1991. The Panel concludes, however, that such a presumption does not exist with respect to an accident happening in between these two periods, notwithstanding its location in Kuwait or Iraq, unless clear evidence of a direct link with the invasion and occupation can be found.

The place of the accident is also found to be significant. As a general rule the Panel determines that the farther the place of the accident was from the claimant's point of departure from Iraq or Kuwait, the more unlikely it was that a link existed between this accident and Iraq's invasion and occupation of Kuwait. As indicated above, the fact that an event occurred in Kuwait or Iraq was considered by the Panel to be a positive element, but was not sufficient in itself to establish such a link.

2. Lack of medical care

Another issue was raised in article 16 reports in the following terms:

> "In category 'B', certain claims have been put forward with respect to injuries that occurred in situations where, due to the lack of availability of proper medical facilities and treatment in Kuwait after 2 August 1990, injuries went untreated and resulted in more severe

[25] Decision 1, para. 18.

injuries, long term complications or death. The issue raised is whether such injuries or deaths are directly related to Iraq's invasion of Kuwait."

The Panel considered additional information and views on this matter presented by some Governments, including the Government of Iraq.

The issue raised by such claims is whether deaths caused by general hardship and difficulties, lack of medicine and medical equipment, or lack of proper medical care resulting from the invasion and occupation of Kuwait are to be considered as direct losses. In considering this issue it must be remembered that Decision 1, para. 18(d), of the Governing Council states that losses suffered as a result of the breakdown of civil order in Kuwait or Iraq during the period of the invasion and occupation are to be considered as direct losses to individuals resulting from the invasion and occupation of Kuwait.

The United Nations reports[26] indicate that the level of health care in Kuwait was severely reduced as a consequence of the Iraqi occupation.

Prior to the invasion most of the physicians and nurses operating in Kuwait were foreigners. An immediate effect of the invasion was the departure of the vast majority of physicians and nurses from Kuwait[27]. By the end of the occupation, the number of health care providers in Kuwait was approximately 20 percent of the pre-invasion level. Those who stayed in the country had to face a number of difficulties to perform their work and were prevented, in many instances, from providing appropriate medical care due to the continuous presence of armed Iraqi soldiers in hospital wards, administrative offices and operating theatres[28].

As a result of this massive departure of medical and paramedical staff, most of the health care centers in Kuwait were closed and those hospitals that remained open were operating at 10 to 20 percent of their original capacity.

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[26] Farah Report and Kâlin Report, see footnote 17 supra.

[27] Farah Report, para 424; Kâlin Report, paras. 191, 197.

[28] Kâlin Report, paras. 190-191.

The provision of health care services was also curtailed due to the destruction and pilferage of hospital equipment, vaccines, surgical tools, hospital beds, and medical supplies. Certain types of treatments could not be administered any more (e.g., transplant operations, dialysis).

Moreover, access to the still operating health care services was restricted, at least for some persons[29]. For example, the population of Kuwait was ordered to exchange Kuwaiti identity documents for Iraqi documents and access to medical facilities was denied to persons who refused to comply with these orders. There were other restrictions such as the first right of access to medical services for Iraqi military personnel, curfew hours and limited ambulance services.

The Panel took into account the foregoing information when it reviewed the numerous claims for serious personal injury or death that were allegedly related to lack of medical care due to Iraq's invasion and occupation of Kuwait. With the help of the Commission's medical expert, the Panel defined the following criteria under which a serious personal injury or a death due to a lack of medical care is considered to be a direct consequence of Iraq's invasion and occupation of Kuwait:

- a serious personal injury or a death that was a consequence of the lack of equipment, medicine or medical care regarded as indispensable under usual circumstances, is determined to be directly related to the invasion and occupation of Kuwait. For example, a number of diabetic persons were deprived of the necessary drugs or treatments so that they developed other serious illnesses, and, in some cases, died;

- a serious personal injury or a death attributed to the lack of medical care, equipment or medicine must be the consequence of an acute deterioration, or of a very severe exacerbation, of the health condition of a person, and not just of an aggravation arising from the normal course and development of a preexisting illness or injury.

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[29] Kälin Report, para. 194.

3. Illness or death caused by events related to the invasion and occupation of Kuwait

The events during the invasion and occupation of Kuwait often greatly impacted on people's health in such a way that in many cases they provoked the death or illness of individuals. For example, a fatal heart attack was caused by the stress and emotion of seeing one's son arrested by Iraqi Forces, or because of the panic and fear induced by a bomb explosion even though the person was not physically wounded. The Panel recommends the payment of compensation where there is a link between the physical condition that caused the death and the invasion or occupation. The same criteria are, mutatis mutandis, applied to claims submitted for serious personal injury.

In other instances, there was no specific event that caused a serious personal injury or death, but the general circumstances prevailing in Kuwait during the period of the occupation by Iraq may have had such an effect. The Panel has applied to these cases the same criteria as above and recommends payment of compensation where evidence is provided.

4. Injury suffered in refugee camps

In some cases, the claimant stated that he/she suffered an injury while in a refugee camp outside Iraq and Kuwait. The Panel took into account that a great number of the people who left Kuwait or Iraq due to the conflict had no other choice but to try and reach their home country through the Iraqi-Jordanian border. These people were then placed in refugee camps where they had to stay a number of days under very difficult living conditions despite all the efforts of the authorities in charge. It was these conditions that led to various injuries, some of which were serious. The Panel recommends compensation in these cases as it considers these injuries to be a direct consequence of Iraq's unlawful invasion and occupation of Kuwait.

5. Injury or death related to authorities other than Iraqi

The Panel had before it a number of claims submitted by persons who were allegedly arrested in Kuwait by Kuwaitis during the days immediately preceding 2 March 1991 and were then interned in Saudi Arabia in camps for Iraqi prisoners of

war. Some of these claimants were allegedly tortured by those who were in control of the camps. All such claimants had Jordanian passports.

A number of other claims were from Jordanian nationals who had been living in Kuwait before Iraq's invasion and whose personal statements indicated that the injuries or death suffered were the result of actions by Kuwaiti nationals or authorities, in particular mistreatment during detention. The issue was raised in article 16 reports in the following terms:

> "A substantial number of claimants in category 'B' have put forward claims in which they assert that they were kept in detention or mistreated in Kuwait after 2 March 1991".

The Panel considered comments made on this issue by several Governments, including the Government of Iraq.

All these claims raise the issue as to whether the losses and damages claimed can be considered as a "direct" result of Iraq's invasion and occupation of Kuwait, or, in other words, are attributable to Iraq.

The Panel determines that in such cases there is no "direct" link to the invasion and occupation of Kuwait because these acts were accomplished by authorities or persons and in places out of the control of the Iraqi authorities.

Moreover, in the view of the Panel, these acts are not covered by para. 18 of Decision 1 which states that claimants may be compensated for serious personal injuries suffered as a result "of military operations or threat of military action by either side during the period 2 August 1990 to 2 March 1991," since the acts that caused the injuries cannot be considered "military operations."

Therefore, while the Panel recognizes that the claimants in this group presented well-substantiated claims, and that under general principles of law these claimants would be entitled to claim for compensation for the injuries or death suffered, the Panel cannot recommend the payment of compensation from the Compensation Fund for them.

III. EVIDENTIARY ISSUES

Article 35, para. 1 of the Rules sets forth the general rule on evidence applicable to all categories of claims and the power of the panels to assess such evidence. The text of the provision is as follows:

> "Each claimant is responsible for submitting documents and other evidence which demonstrate satisfactorily that a particular claim or group of claims is eligible for compensation pursuant to Security Council resolution 687 (1991). Each panel will determine the admissibility, relevance, materiality and weight of any documents and other evidence submitted."

The evidentiary standards to be applied in particular to claims in category "B" are set forth in article 35, para. 2 (b) of the Rules:

> "For the payment of fixed amounts in the case of serious personal injury not resulting in death, claimants are required to provide simple documentation of the fact and date of the injury; in the case of death, claimants are required to provide simple documentation of the death and the family relationship. Documentation of the actual amount of loss will not be required."

In addition, and since only claims for losses, damages or injuries that were a direct consequence of Iraq's invasion and occupation of Kuwait are compensable[30], this direct link has also to be proved by the claimant.

A. General considerations

One of the key issues facing the Panel in this first instalment of claims is to determine what evidence is required under the standards established by Governing Council Decision 1 for the claims to be eligible for compensation. The following is an overview of the different types of evidence submitted by claimants in support of death and injury claims and some background information concerning the availability and validity of such evidence in the context of the circumstances surrounding the invasion and occupation of Kuwait.

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[30] Security Council resolution 687 (1991), para. 16.

1. Analysis of the different types of evidentiary items

a) Identity documents

Different evidentiary items were provided by claimants as proof of identity.

The "B" claim form instructs the claimant to submit documentation confirming his/her identity and nationality, such as a photocopy of a passport or national identity card. The claim form provides spaces for the claimant to indicate his/her passport number, national identity card number, civil identification number issued by the Kuwaiti authorities, or residency permit number issued by the Iraqi authorities. For death claims, the "B" claim form requests the claimant to provide the passport number, Kuwaiti civil identification number, or the Iraqi residency permit number of the deceased in the space provided on the claim form.

In addition to the information on the claim form, claimants usually submitted a photocopy of their passports, Kuwaiti civil identification cards, their family registration record, or travel documents that were issued by the relevant authorities to allow them to leave Kuwait or Iraq after the invasion. Claimants' passports often contained visas that indicated that the claimant had been a resident of Kuwait or Iraq, or exit stamps from the Iraqi authorities that indicated that the claimant had departed from Kuwait or Iraq during the relevant time period. In claims for death, the death declaration or death certificate attested to the identity of the deceased. In addition, a number of claimants provided the passport number, Kuwaiti civil identification number, or Iraqi residency permit number of the deceased on the claim form. The Panel considers this sufficient documentation of the identity of the claimant or the deceased. The issue of the proof of family relationship between the claimant and the deceased is discussed in section "C" below.

b) Statements by claimants

A majority of the claims are supported by a claimant statement. The evidentiary weight to be given to statements by claimant may be determined in light of the following factors:

(i) The claims processing and screening program established by each claimant country, and specifically whether the statements were prepared pursuant to an interview of the

claimant by a screening official, or whether the claimant was interviewed about the contents of his or her statement;

(ii) General background information compiled by national authorities, international organizations or other independent entities regarding the nature and causes of injury or death purportedly as a result of the Iraqi invasion of Kuwait; such general background information may provide secondary or circumstantial support for the claim and the allegations contained in the claimant's statement;

(iii) The general level of education of the person preparing the statement, and the relationship of the claimant to the deceased.

c) Witness statements

A number of claims are supported by witness statements. The witness statement may be an independent document prepared by the witness, or the assertions contained in the claimant's statement may have been attested to by one or two witnesses. The evidentiary weight to be given to witness statements may be analyzed and determined in light of the following factors:

(i) The relationship of the witness to the deceased or the injured person, keeping in mind that under hostile conditions and circumstances involving urgency, the only available witness may be a person related to the victim;

(ii) General background information compiled by national authorities, international organizations or other independent entities regarding the nature and causes of death purportedly as a result of the Iraqi invasion of Kuwait. As with claimant statements, such general background information may provide secondary or circumstantial support for the assertions contained in the witness statements;

(iii) The national claims processing and screening program of the claimant country, and specifically whether the witness statement was prepared with the involvement of a screening official, or whether the witness was interviewed by the national claims screening authorities regarding the assertions in the witness statement;

(iv) General evidentiary principles relating to the quality and relevance of the witness statement, such as

whether the statement indicates the bases for the witness testimony (i.e., time, place, first hand knowledge of the events).

d) Death or burial certificate, or other official documents

A death or burial certificate, or similar document prepared by an official entity (i.e., national authority, foreign embassy, international organization), such as a letter informing the deceased's family of the death, may be regarded as conclusive evidence of the fact of death. In some instances, depending on the issuing authority and the exact contents of the certificate, these documents may also be very probative of the cause of death. The reliability of such documentation as to the cause of death depends on the procedures adopted by the relevant authority or entity in issuing the document. Martyr's Certificates issued by Kuwait, and death certificates issued by Iraq, Jordan, Saudi Arabia and Kuwait are examples of such documents.

e) Medical opinions showing the cause of death or injury

Certain of the claims are supported by an opinion prepared by an individual doctor or a committee of doctors who evaluated the cause of death or injury.

2. Level of evidentiary support

Nearly all the claims for serious personal injury and death were supported by some form of proof, although most of the claims in the first instalment contained a minimal level of documentary evidence. The scarcity of evidentiary support characterizing many claims may be attributable mainly to the circumstances prevailing in Kuwait and Iraq during the invasion and occupation period. Under the general emergency conditions prevailing in the two countries, thousands of individuals were forced to flee or hide, or were held captive, without retaining documents that later could be used to substantiate their losses. In addition, many claimants chose not to or could not return to Iraq or Kuwait, and therefore had difficulty producing primary evidence of their losses, damages or injuries.

Moreover, the lack of medical documentation or death certificates may be explained by the breakdown in civil order

within Kuwait ensuing Iraq's invasion. Because large numbers of doctors, nurses and hospital administrative staff had fled Kuwait in the aftermath of the invasion, hospital administrative services were operating much below their normal capacity and many patients had to be cared for at home. Accordingly, the contemporaneous preparation of doctor's reports, medical certificates and records, or death certificates was severely limited[31]. Thus, in a significant number of cases medical reports did not exist or records were lost.

The scarcity of evidentiary support where massive numbers of claims are involved is not a phenomenon without precedent in international claims programs, in particular if the events generating responsibility have taken place in abnormal circumstances such as those prevailing in Kuwait and Iraq during the conflict. An analysis of the practice of international tribunals regarding issues of evidence shows that tribunals often had to decide claims on the basis of meagre or incomplete evidence. It has been observed that the lowering of the levels of the evidence required occurs especially "in the case of claims commissions, which have to deal with complex questions of fact relating to the claims of hundreds or even thousands of individuals"[32].

The Governing Council, in Decisions 1 and 7, has established a gradation in the requirement of evidence for the different categories of claims, setting forth more relaxed standards of evidentiary support for claims in categories "A", "B" and "C" (urgent claims) and among those categories, for claims for fixed amounts (Decision 1, paras. 11, 12 and 15).

Recalling that para. 11 of Decision 1 states that "simple" documentation of the fact and date of the injury or of the death will suffice as proof, some Governments have stressed the fact that many claimants were unable to provide full documentation to substantiate their claims. They are of the view that the claimant's own statement describing what happened can support claims on form B.

The Panel noted considerable disparities concerning the degree of evidence submitted, among claims submitted by

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[31] Kälin Report, paras. 189-200.

[32] Durward D. Sandifer, Evidence Before International Tribunals, Revised Edition 1975 at 22.

different Governments, and within them, among individual claims. This was mainly due to the differences among the claims programs that were instituted in various countries. In some countries claimants completed their claims under the supervision or with the assistance of a national claims program official, and evidentiary items provided by claimants were reviewed by program officials. The particular socio-economic situation of the claimants, such as education and income levels have also had an impact on the way claims were prepared and submitted to the respective Government.

All the circumstances mentioned above were taken into account in assessing the evidence submitted in each case, but the Panel required in all cases a minimum level of evidence to recommend an award of compensation.

B. Claims for serious personal injury

1. General approach

Two elements are required by the Panel in order for a claim for serious personal injury to be compensable: a) evidence of the date and fact of the injury; b) proof of causation (evidence showing that the cause of the injury is linked to the Iraqi invasion and occupation of Kuwait).

The Panel noted that the circumstances prevailing in Kuwait and in some of the neighbouring countries during the period 2 August 1990 to 2 March 1991 made it extremely difficult for claimants to obtain contemporaneous medical documentation. The Panel therefore accepted non-contemporaneous medical documentation as sufficient evidence of the fact of the injury.

However, requiring medical documentation as proof of the injury is subject to several exceptions. For some claimants it may have been difficult to obtain medical reports documenting their injuries due to the reduced level of health services in Kuwait during the occupation[33]. Claimants may have found it difficult to consult a doctor for personal or cultural reasons as in the case of sexual assault or torture. The claimant may also have been unable to receive any medical assistance due to

[33] See Part III, section A, item 2 supra.

the circumstances of the event, e.g., injuries suffered in the desert while escaping from Iraq or Kuwait. In such cases, the Panel has accepted other documentary evidence, witness statements and, in certain cases, the personal statement by the claimant as sufficient proof of the fact of the injury.

2. Particular cases

a) Injury caused by torture

The Panel had before it a number of claims, the majority of which were submitted by the Government of Kuwait, where the claimant stated that he/she had been detained by Iraqi Forces and while in detention had been tortured. Decision 3, para. 2 of the Governing Council states that "'serious personal injury' also includes instances of physical or mental injury arising from ... torture...."

Most of these claimants have submitted a personal statement affirming they had been detained and tortured, and an official document from the Kuwaiti authorities or the International Committee of the Red Cross stating that the person had been detained. However, a vast majority of these claimants have not submitted any medical documentation. The Commission's medical expert confirmed that many torture victims often do not wish to seek the help of a physician, as they may wish to suppress the memory of the torture, or they may be embarrassed to admit that their mental health has been affected by the ordeal. Furthermore, some forms of torture do not leave any appreciable physical scars and a physician would not have been able to offer a written assessment of the physical injuries suffered by the claimant.

The Panel also took into account the fact that Kuwaiti nationals were particularly exposed to mistreatment by Iraqi forces while in detention as it was stated in a United Nations report[34]. Considering all these factors, the Panel

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[34] Kälin Report, para. 115: "According to interviews conducted by the Special Rapporteur, the Farah Mission and the Kuwaiti Association for the Defence of Victims of War, torture was widespread. An indication of the widespread use of torture was given by Dr. Al-Hammadi's two studies. Among the 100 former detainees repatriated from Iraq whose condition was analyzed in the first study, 76 claimed to have been subjected to some kind of torture or cruel, inhuman or degrading treatment, and 261 out of 330 former detainees examined in the

determines that compensation should be awarded to those claimants who showed that they were tortured by Iraqi forces while in detention, even if they were not able to submit medical documentation, provided that the fact of detention has been attested to by an official authority.

b) Injury caused by sexual assault

Governing Council Decision 3, para. 2 states that "'serious personal injury' also includes instances of physical or mental injury arising from sexual assault....". The Panel had before it some claims where rape by members of the Iraqi military forces was asserted as the cause of the injury. These claimants did not provide any medical documentation. The Commission's medical expert was of the view that many rape victims often do not wish to seek the help of a physician, as they may wish to suppress the memory of the rape, or they are embarrassed to admit that they have been sexually assaulted. Furthermore, a physician would not have been able to offer a written assessment of the physical injuries suffered by the claimant, unless the claimant presented herself for treatment immediately after the attack, which would have been difficult during the invasion and occupation of Kuwait.

The Panel notes that it is a well-documented fact that many women were raped by Iraqi forces, as was stated in a United Nations report[35].

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second study reported having been subjected to physical or psychological torture or abuse." and

para.117: "(i)n numerous cases, torture and inhuman, cruel or degrading treatment resulted in a permanent physical or mental damage. Medical and psychiatric reports made available to the Special Rapporteur showed that former victims of torture still suffer from, inter alia, partial paralysis, pains, severe forms of depression, sleep disturbances and nightmares, severe anxiety, partial amnesia and inability to concentrate, often requiring medical and psychological care."

[35] Kälin Report, para. 182: "...women particularly were victims of rape. According to the information received and interviews conducted during the Special Rapporteur's visits to Kuwait, the following categories of cases of rape can be distinguished:
a) Rape of foreign women by Iraqi soldiers during the first two weeks of the occupation. Most, but not all, of the victims were young women of Asian origin....
b) Rape of women during house searches by Iraqi army personnel, sometimes in front of close relatives...

Taking the above-noted factors into account, the Panel recommends compensation for claims for rape where circumstantial evidence is available[36].

c) Injury caused by pollution from burning oil wells

There were very few claims in this grouping caused by pollution emitted from burning oil wells. The issue was raised in article 16 reports, in the following terms:

> "Some claimants in Category "B" assert that they suffer from serious respiratory problems arising from the air pollution as a result of the burning oil fields in Kuwait".

The Panel reviewed additional information and views made by the Governments that have submitted claims and by the Government of Iraq on this issue, as well as a United Nations report[37].

It is the view of the Panel that claims for serious personal injury caused by the pollution emitted from Kuwaiti oil wells are compensable as the environmental damage from burning oil wells was, according to United Nations reports, caused by Iraqi occupying forces[38].

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c) Other women were reportedly raped when abducted for that purpose from check-points or from the street.
d) Finally, rape was used as a method of torture...."

[36] As was stated by the Inter-American Court of Human Rights, Velasquez Rodriguez Case, Judgment of 29 July 1988, para 130: "...direct evidence, whether testimonial or documentary, is not the only type of evidence that may be legitimately considered in reaching a decision. Circumstantial evidence, indicia, and presumptions may be considered, so long as they lead to conclusions consistent with the facts."

[37] Kälin Report, para. 204: "The Special Rapporteur was informed by doctors in Kuwait that after February 1991, there had been a certain increase of health problems, especially of children, elderly or sick persons, which might be attributed to environmental pollution caused by burning oil wells. Such problems were described as 'limited', although the increase of cases of respiratory problems was substantial."

[38] Farah Report, para. 138, and Kälin Report, para. 203.

Both the fact of the injury and the cause of the injury must be mentioned in relevant medical documentation before compensation can be recommended. The Panel relied, when necessary, on an assessment by the Commission's medical expert that the pollution emitted from burning oil wells could have caused the particular serious personal injury alleged by a claimant.

C. Claims for death

The Panel determines that claims for death are compensable where three elements are present in the claim: a) evidence of the fact of the death, b) proof of the family relationship between the claimant (or claimants) and the deceased, and c) proof of causation (evidence of the link of the death to the invasion and occupation of Kuwait by Iraq).

1. Proof of the fact of death

A death or burial certificate, or similar document prepared by an official entity (i.e., national authority, foreign embassy, international organization) such as a letter informing the deceased's family of the death, was regarded as conclusive evidence of the fact of the death. In some instances, depending on the issuing authority and the exact contents of the certificate, these documents were also found to be probative of the cause of death.

As in the case of medical documentation for serious personal injury, in many cases death certificates could not be issued at the time of the death for the following reasons:

- the cause of death had to be investigated by a doctor and the number of medical professionals who could conduct such an investigation during the occupation was limited;
- there were large numbers of deaths in Kuwait that were not contemporaneously certified or recorded, and hence, there was a considerable backlog of investigations that had to be conducted before a death certificate could be issued;
- in some instances, families received death certificates from Iraqi authorities during the occupation and had to convert these to Kuwaiti death certificates after the liberation.

Thus, in a significant number of cases, death certificates were not issued until many months after the death

occurred. Considering the circumstances described, the Panel finds that such death certificates constitute sufficient proof of the fact of death.

Following liberation, the Kuwaiti authorities established a Martyr's Office to declare as martyrs certain persons who died during the occupation of Kuwait. According to a report of the Martyr's Office, it investigated mainly the fact and the cause of death. Such martyr's certificates were submitted with respect to a number of death claims by the Government of Kuwait. Taking into account the scrutiny followed by the Martyr's Office for issuing the martyr's certificates, the Panel accepted these documents accompanying claims submitted by the Government of Kuwait as sufficient evidence of the fact of death.

2. Proof of family relationship

Decision 1, para. 12 states that simple documentation of the family relationship is required for a claim for death in category "B" to be compensable. The Panel holds that a marriage certificate, birth certificate, certificate of inheritance, or family registration record is sufficient proof of family relationship for the purposes of these claims since the names of the deceased and claimants appear therein. A passport that includes the name of the deceased and the claimant(s) is also considered sufficient proof of the family relationship. The Panel finds, however, that the structure of a claimant's name that often states the claimant's name, the father's name, and sometimes the grandfather's name (as seen in many Arabic names), is, by itself, not sufficient proof of the family relationship between the claimant and the deceased.

The Panel had before it cases where only the structure of the claimant's name gave any indication of the family relationship and where no other proof of family relationship had been submitted. Since in these claims the Panel ascertained that there was a causal connection between the death or serious personal injury and the invasion or occupation of Kuwait it requests that the relevant Governments provide additional information relating to the family relationship between the claimant(s) and the deceased.

D. The causal link

Pursuant to Security Council resolution 687 (1991), evidence is required showing that the serious personal injury or death was a consequence of the Iraqi invasion and occupation of Kuwait.

The Panel considers a death certificate or any other official document (e.g., a police report) sufficient evidence of the link to the invasion if such death certificate or official document indicates that the cause of death was connected to the invasion. In the case of death certificates that do not state the cause of death, other documentary evidence explaining how the death was a consequence of the invasion is accepted by the Panel as sufficient evidence of a causal connection if other elements in the claim are consistent with the contents of the statement.

In claims for serious personal injury, the Panel considers evidence such as a witness statement, an affidavit or a medical report, as sufficient proof of the link of the injury to the invasion and occupation of Kuwait. In certain cases, the Panel considers a personal statement explaining the link of the serious personal injury to the Iraqi invasion and occupation of Kuwait as sufficient proof of a causal connection when it is confirmed by the Commission's medical expert that the injury is consistent with the cause as invoked by the claimant.

IV . RECOMMENDED COMPENSATION AND OTHER DECISIONS

This part of the report provides a brief overview of the claims contained in the first instalment and, based on the determinations explained above, sets out the recommendations of the Panel to the Governing Council regarding this instalment of claims pursuant to article 37 (e) of the Rules.

These findings are without prejudice to the conclusions and findings of panels for other categories of claims.

A. Overview of the claims

Category "B" Claims Contained in the First Instalment

Country	Death	S.P.I.[39]	Total
1. Australia	0	4	4
2. Bahrain	0	22	22
3. China	3	1	4
4. Czech and Slovak Rep.	0	2	2
5. France	0	27	27
6. Iran (Islamic Republic of)	1	1	2
7. Japan	0	2	2
8. Jordan	218	285	503
9. Kenya	0	1	1
10. Kuwait	296	68	364
11. Mauritius	0	1	1
12. Pakistan	4	9	13
13. Poland	2	2	4
14. Sri Lanka	16	45	61
15. Thailand	3	1	4
16. United Kingdom	2	88	90
17. United States	2	12	14
19. F.R.Yugoslavia[40]	0	1	1
TOTAL	547	572	1,119

[39] SPI: serious personal injury.

[40] FRY: Federal Republic of Yugoslavia (Serbia and Montenegro).

B. Recommendations to the Governing Council

Pursuant to article 37 (e) of the Rules, the Panel hereby presents its final recommendations on the claims contained in the first instalment of category "B" claims for each country by consolidated claim. A breakdown of these recommendations by individual claim within each consolidated claim is also attached. This section also provides a summary of the other decisions of the Panel.

The recommendations and decisions are presented as follows:

- claims for which the Panel recommends the payment of compensation;
- claims for which the Panel recommends that no compensation be awarded;
- claims the Panel requested the Executive Secretary to transfer to the category "C" Panel of Commissioners (transferred claims);
- claims for which no recommendation has been made at this stage;
- summary of all recommendations and decisions, by country.

1. Claims for which compensation is recommended

The Panel recommends the payment of compensation for 670 individual claims. The amounts of compensation for claims in the first instalment, with respect to each consolidated claim, are the following:

a) By country by consolidated claim number (in alphabetical order)

Country	Consol. Cln Number	Recommended Amount (USD)
Australia	AU/00027/01B	2,500
China	CN/00148/01B	5,000
Slovak Republic*	CZ/00085/01B	2,500

* The claims were initially submitted by the Czech and Slovak Federal Republic. The award of compensation is to be paid to the Government of the Slovak Republic.

France	FR/00070/01B	37,500
	FR/00127/02B	15,000
	Total FR	52,500
Iran (Islamic Republic of)	IR/00063/01B	2,500
Jordan	JO/00103/01B	982,500
Kenya	KE/00105/01B	2,500
Kuwait	KW/00007/01B	95,000
	KW/00014/02B	80,000
	KW/00144/03B	1,222,500
	Total KW	1,397,500
Mauritius	MU/00080/01B	2,500
Pakistan	PK/00024/01B	22,500
Poland	PL/00116/01B	10,000
Sri Lanka	LK/00109/01B	110,000
Thailand	TH/00095/01B	10,000
United Kingdom	GB/00019/01B	22,500
	GB/00055/02B	10,000
	GB/00071/03B	10,000
	GB/00102/04B	32,500
	GB/00131/05B	15,000
	GB/00161/06B	17,500
	Total UK	107,500
United States	US/00006/01B	7,500
	US/00040/02B	15,000
	US/00097/03B	12,500
	Total US	35,000
F.R.Yugoslavia[41]	YU/00008/01B	2,500
TOTAL RECOMMENDED AMOUNT		2,747,500

b) By individual claim by country

The breakdown of the recommendations for each country is presented by UNCC claim number within each consolidated claim, and indicates the name of each individual claimant. The breakdown is attached in Annex I by country in alphabetical order.

2. Claims for which no compensation is recommended

The claims with respect to which the Panel recommends that no compensation be awarded are listed in Annex II by country, in alphabetical order, by UNCC claim number, indicating the name of each individual claimant.

[41] FRY: Federal Republic of Yugoslavia (Serbia and Montenegro).

3. Transferred claims

The claims that the Panel requested the Executive Secretary to transfer to the Panel of Commissioners dealing with the category "C" claims, in accordance with article 32, para.3 of the Rules, are listed in Annex III by country in alphabetical order, by UNCC claim number and by claimant name.

4. Other decisions

The Panel has considered claims that were filed for serious personal injury on behalf of persons that are asserted to be still in detention in Iraq, and death claims filed for "missing persons". No award of compensation is recommended at this stage for these claims that are listed in Annex IV.

In a number of cases, the Panel has requested that more information be provided by Governments. The relevant list appears in Annex V.

5. Summary of recommendations and decisions

The Panel recommends compensation for 670 claims; it does not recommend compensation for 307 claims; it requests the transfer of 88 claims to the Panel of Commissioners for category "C" claims; it requests additional information in 40 cases, and it declines to make any recommendation at this stage for 14 claims.

Annex VI summarizes all the claims in the first instalment by country, together with the respective recommendation or decision.

Geneva, 14 April 1994

(Signed) Mr. Mohamed Bennouna
Chairman

(Signed) Ms. Denise Bindschedler-Robert
Commissioner

(Signed) Ms. Fang Ping
Commissioner

Annex

ANNEX VI/SUMMARY OF THE RECOMMENDATIONS AND DECISIONS

COUNTRY	CLAIMS RECOMMENDED FOR PAYMENT	CLAIMS NOT RECOMMENDED FOR PAYMENT	TRANSFERRED CLAIMS	MISCELLANEOUS CLAIMS	TOTAL NUMBER OF CLAIMS	TOTAL AMOUNT (USD)
AUSTRALIA	1	1	2		4	2500
BAHRAIN			22		22	
CHINA	2	2			4	5000
SLOVAK REP.	1	1			2	2500
FRANCE	21	2	4		27	52500
IRAN (ISLAMIC REPUBLIC OF)	1			1	2	2500
JAPAN		1	1		2	
JORDAN	241	232	6	24	503	982500
KENYA	1				1	2500
KUWAIT	303	30	6	25	364	1397500
MAURITIUS	1				1	2500
PAKISTAN	7	5		1	13	22500
POLAND	3		1		4	10000
SRI LANKA	34	25		2	61	110000
THAILAND	3			1	4	10000
UNITED KINGDOM	39	7	44		90	107500
UNITED STATES	11	1	2		14	35000
F. R. YUGOSLAVIA	1				1	2500
TOTAL	670	307	88	54	1119	2747500

UNITED
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Security Council

Distr.
GENERAL

S/1994/793
5 July 1994

ORIGINAL: ENGLISH

NOTE BY THE SECRETARY-GENERAL

The Secretary-General has the honour to transmit to the Security Council the attached communication of 15 June 1994, which he has received from the Director General of the International Atomic Energy Agency (IAEA).

Annex

Letter dated 15 June 1994 from the Director General of the International Atomic Energy Agency addressed to the Secretary-General

United Nations Security Council resolution 699 (1991), approved on 17 June 1991, requests, inter alia, the Secretary-General to submit to the Security Council progress reports on the implementation of the plan for the destruction, removal or rendering harmless of the items specified in paragraph 12 of resolution 687 (1991). Such reports are to be submitted every six months after the adoption of resolution 699 (1991). The next report is therefore due on 17 June 1994.

Please find attached an outline of the activities carried out by the IAEA during the past six months under the plan for the destruction, removal or rendering harmless, which you might find useful for the preparation of your report.

(Signed) Hans BLIX

Appendix

Sixth semi-annual report (covering the period 18 December 1993-17 June 1994) on the implementation by the IAEA of the plan for the destruction, removal or rendering harmless of items listed in paragraph 12 of Security Council resolution 687 (1991)

INTRODUCTION

By resolution 699 of 17 June 1991, the Security Council approved the plan submitted by the International Atomic Energy Agency (IAEA), through the Secretary-General, for the destruction, removal or rendering harmless of all items listed in paragraph 12 of Security Council resolution 687 (1991). Resolution 699 also called for the Secretary-General to submit every six months a progress report on the implementation of the plan.

The first five reports were circulated by the Secretary-General to the members of the Security Council in Document S/23295, dated 17 December 1991; S/24110, dated 17 June 1992; S/24988, dated 17 December 1992; S/25983, dated 21 June 1993; and S/26897, dated 20 December 1993.

This is the sixth semi-annual report on the implementation by the IAEA of the plan for destruction, removal or rendering harmless covering the period from 18 December 1993 to 17 June 1994. During this period, the IAEA, with the assistance

and cooperation of the Special Commission of the United Nations, conducted two on-site inspections in Iraq (IAEA-23 and IAEA-24), detailed reports of which have been distributed to the Security Council.[1]

PRESENT STATUS

As of 17 June 1994, the IAEA has carried out twenty-four missions in Iraq. The major activities related to destruction, removal and rendering harmless of proscribed items involved equipment, materials (nuclear and non-nuclear), components, instrumentation, dedicated buildings, plants and their auxiliaries, directly connected with Iraq's past activities in the field of uranium isotopic enrichment, plutonium separation and nuclear weapons design and development.

The IAEA and the Special Commission continued the high-level technical discussions with Iraq with a view to facilitating the full implementation of the plans for ongoing monitoring and verification in Iraq. Since the last report, meetings have been held in Baghdad (in February and April), New York (in March and May) and Vienna (in May).

In the course of the high-level technical talks, the Iraqi Government continued to press for the submission of reports by the IAEA and the Special Commission

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[1] **Documents S/1994/355, dated 25 March 1994, and S/1994/650, dated 1 June 1994.**

which would permit the Security Council to consider the lifting of the oil embargo, in accordance with paragraph 22 of Security Council resolution 687 (1991).

In the present phase of work, most of the activities carried out in Iraq by the IAEA under the relevant Security Council resolutions relate to the establishment of procedures for the full implementation of the ongoing monitoring and verification plan approved in Security Council resolution 715 (1991).

Direct-Use Material

Irradiated Fuel

The second and final consignment of irradiated enriched uranium fuel was successfully packaged and shipped from Iraq at the conclusion of IAEA-23. The remaining irradiated fuel, which had been stored at Location B and at the IRT-5000 reactor site, was cleaned and transferred to four shielded transport flasks. The flasks were then tested, sealed and loaded into containers and transported, by road, to Habbaniya Airport on 11 February 1994. IAEA radiation protection staff were in attendance throughout the exercise and an ICAO/IATA Dangerous Cargo Inspector was present to review the documentation and inspect the loaded flasks and ancillary equipment which were loaded onto an Antonov 124 on 12 March and flown to Ekaterinburg the same day.

This shipment completed the task of removing all of the direct weapons-usable nuclear material from Iraq. In accordance with the contract with Minatom, for the removal and disposition of the fuel, the irradiated fuel will be chemically treated to separate the enriched uranium from the radioactive wastes and plutonium. The radioactive waste and plutonium will be embedded in a glass matrix and permanently stored at a Russian repository, while the recovered enriched uranium will be isotopically diluted to less than 20% enrichment and kept at the disposal of the IAEA.

Other Nuclear Material

Nuclear source material is not included in the items to be destroyed, removed or rendered harmless under UN Security Council resolution 687 (1991). However, complete knowledge of uranium stocks is essential for a meaningful implementation of the IAEA ongoing monitoring and verification.

The process of gathering and consolidating, in a single location, all nuclear source material (such as uranium concentrates and other uranium compounds) existing in Iraq has continued during the last two inspections. As regards further verification of Iraqi declarations concerning such material, the IAEA is in contact with the Brazilian authorities to verify the amount of uranium oxide of Brazilian origin shipped to Iraq in the early eighties.

Installations, Equipment and Other Materials Relevant to Enriched Uranium Production and to Weaponization Activities

As indicated in the previous report, the Iraqi authorities have submitted an updated list of material, equipment and other items in Iraq identified in Annex 3 of the Agency's plan for future ongoing monitoring and verification of Iraq's compliance with paragraph 12 of part C of Security Council resolution 687 (1991). Verification of the correctness and assessment of the completeness of the list, begun in the course of the eighteenth inspection, is continuing. A description of the verification activities carried out during IAEA-23 and IAEA-24 is set out in the detailed reports of these two missions. None of the newly-included items which have been verified have fallen in the category of proscribed items that are required to be destroyed, removed or rendered harmless under Security Council resolution 687 (1991).

Items identified in IAEA document INFCIRC/209/Rev. 1 and its annex are incorporated by reference in Annex 3, item 4 of the IAEA ongoing monitoring and verification plan and are therefore required to be reported by Iraq to the IAEA. INFCIRC/209/Rev.1 established by the Nuclear Suppliers Group (NSG), is a list of equipment or material especially designed or prepared for the processing, use or production of special fissionable material. This document was expanded by the NSG to include additional items related to the production of special fissionable material (INFCIRC/209/Rev.1/Mod.2). A copy of the revision was handed to the Iraqi authorities in Baghdad during the course of the high level technical talks. By letter

dated 13 June 1994, the IAEA formally communicated to the Iraqi authorities the text of the document and advised them that any change, amendment or addition to INFCIRC/209/Rev.1, including the Annex to it, are incorporated automatically into Annex 3 of the plan and have the same binding effect on the Iraqi reporting requirements under Annex 3 of the IAEA plan. The Iraqi authorities were advised accordingly that all additional items listed in INFCIRC/209/Rev.1/Mod.2 must be reported in the next periodical update of the list of Annex 3 items.

FUTURE ACTIONS

Under the contract concluded with the Russian Ministry for Atomic Energy, all the irradiated fuel assemblies removed from Iraq will be reprocessed to recover the highly enriched uranium. The latter will be isotopically diluted to less than 20% enrichment by blending it with natural or depleted uranium. The radioactive waste resulting from reprocessing will be adequately conditioned and permanently stored in a waste repository, as will the resulting separated plutonium.

Efforts will continue toward resolving remaining uncertainties in the nuclear material inventory and the nuclear material flow chart submitted by the Iraqi authorities.

Verification of the correctness and assessment of the completeness of the revised list of items submitted pursuant to Annex 3 of the plan for future ongoing monitoring will continue.

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General Assembly
Security Council

Distr.
GENERAL

A/48/962
S/1994/794
5 July 1994

ORIGINAL: ENGLISH

GENERAL ASSEMBLY
Forty-eighth session
Agenda item 54
QUESTION OF CYPRUS

SECURITY COUNCIL
Forty-ninth year

Letter dated 5 July 1994 from the Permanent Representative of Cyprus to the United Nations addressed to the Secretary-General

With reference to your recent letter to the President of the Security Council on events following your report of 30 May 1994 (S/1994/629) on the issue of the confidence-building measures, upon instructions from my Government I have the honour to transmit herewith a letter addressed to you by H.E. Mr. Glafcos Clerides, President of the Republic of Cyprus.

I should be grateful if the text of the present letter and its annex could be circulated as a document of the forty-eighth session of the General Assembly, under agenda item 54, and of the Security Council.

(Signed) A. SHAMBOS
Ambassador, Permanent Representative
of the Republic of Cyprus to the
United Nations

ANNEX

Letter dated 5 July 1994 from the President of Cyprus to the Secretary-General

I have received copy of your letter addressed to the President of the Security Council (S/1994/785) in which you refer to the events following your report of 30 May 1994 (S/1994/629). In view of the fact that certain parts of the letter are likely to give the wrong impression of where we stand on the issue of the confidence-building measures, I would like to clarify once again our position:

1. The confidence-building measures were at first proposed in Cyprus on your behalf in March 1993 by your Deputy Special Representative, Mr. Feissel, and extensive proximity talks were held. Your Deputy Special Representative, as a result of the proximity talks, formed the impression that substantial progress was made and a meeting with you was arranged in New York in May 1993. At that meeting I accepted the proposed confidence-building measures. Mr. Denktash claimed that he had no authority from his "parliament" to accept them, and he asked for an adjournment of 15 days to return to Cyprus and to try to persuade his "parliament". Instead, as soon as he returned from New York, he spoke against the confidence-building measures both at his "parliament" and the Turkish National Assembly, and he failed to honour his commitment to return to New York.

2. In fact, it took about eight months for Mr. Denktash to respond before your representatives were able to commence proximity talks for seeking an agreement on the key issues relating to the modalities for the implementation of these measures.

3. After several meetings and discussions of both sides with your Special Representative Mr. Joe Clark, and the Deputy Special Representative Mr. Gustave Feissel, they produced a preliminary non-paper, which was discussed with both sides again and then on 21 March they tabled the document containing the proposed set of modalities which they urged us to accept, without raising any of our several reservations. They assured us that it would be the final document. In order to be constructive and helpful to the whole process, we went along and stated our acceptance on the condition that the Turkish Cypriot side would also accept this document. We, furthermore, stressed that we would not be willing to go beyond this document into further discussions of the confidence-building measures and the modalities for their implementation.

4. Your report, which was due to be issued at the end of March, was postponed until the end of April and was finally issued on 30 May 1994 (S/1994/629). Your report states clearly that your document of 21 March, which we accepted and the Turkish side rejected, was a balanced document.

5. We then observed a process being pursued which included meetings and discussions in Vienna in the presence of your Deputy Special Representative, in which Turkey was represented, Mr. Denktash was also represented and the Government of the United States of America, and although your good offices are

to assist the representatives of the two communities, the Greek Cypriot community was neither represented nor kept informed. Furthermore, the views of the Greek Cypriot side were not asked on what was agreed with the representative of Turkey and Mr. Denktash. These meetings did in fact involve discussions of changes to be effected on the balanced document of 21 March in order to make it acceptable to Mr. Denktash. Clearly, this process lay totally outside the scope of your good offices which are between the representatives of the two communities, under the auspices of the Secretary-General or his representatives.

6. Following the above, several more meetings were held, the content of which we were informed from the Turkish press, concluding in a set of changes that would have been put before us in the form of a letter. This we could not accept since we were neither present nor consulted, before agreement was reached with the Turkish side, in the agreement of these documents and we cannot be bound by them. With regard to reservations on the document of 21 March we had many, but we agreed not to raise them in order to facilitate progress. Furthermore, we cannot be bound by changes which have been agreed in our absence on the document of 21 March, which you yourself described as fair and balanced.

7. Characterizing the result of these discussions as clarifications is, I think, not the appropriate term, because major changes have indeed been made. For example, the change on the issue of access to Varosha creates a situation which psychologically does not create confidence to the people of Varosha that a safe access has been provided and as such the changes made cannot be considered as a clarification. It would be unrealistic to expect that the people of Varosha will be willing to return to their homes and properties while encircled all around by Turkish Forces, including from the side of the sea, and to be ready to invest $2 billion for rebuilding their city which was destroyed by the Turkish occupation forces. Similarly the reference to "Turkish Cypriot police" is in itself against the basic condition you placed at the outset of the process, namely, that nothing should be included in the agreement that would constitute the measures as a direct or indirect recognition. Signing an agreement, however, referring to the "TC police" is tantamount to recognizing the existence of a "state".

8. Consequently, although we remain committed to our acceptance of the document of 21 March, as I have repeatedly stated, and my Foreign Minister stressed during his meeting and included in the talking points handed to you, we are unwilling to move away from the balanced document of the United Nations of 21 March and adopt changes that are the result of consultations and talks to which we were not a party.

9. I am gravely concerned because, bearing in mind your reference in your report of 30 May in which you state that for several years there has been a display of lack of political will by the Turkish side, and your recommendations of several options, which clearly show that the major question to be considered is how the much-needed political will on the Turkish side can be created, I wonder whether the policy to accommodate Mr. Denktash's demands for changes of a fair and balanced United Nations document is giving the right message to him for the need to have political will.

10. My concern becomes even greater because during this recent period, several statements by Turkish officials show amply that the objective of Mr. Denktash in this whole exercise was nothing else than to try to shift the responsibility for failure from his shoulders while seeking recognition of his illegal regime. I wish, for the sake of the record, to list below some of the most prominent recent such statements:

(1) Mr. Denktash stated to the Kibris daily paper of 21 September 1993 the following:

"It is necessary to make a new evaluation. When we say federation we want recognition of our sovereignty and our territorial integrity".

(2) The President of Turkey, Mr. S. Demirel, stated to the illegal Bayrak Broadcasting Station on 3 June 1994 and on the 16 June 1994 the following:

(a) "Will the problem be solved if you put two different nations in a melting-pot, at a time when federations are being dissolved in the world?"

(b) "Today whether such a federal solution will be reached or not is being debated. The situation in Cyprus today is a solution in itself".

(3) Mr. Osman Ertug, "representative" in New York of the illegal entity in the occupied area, on 29 May 1994 stated the following:

"In reality of course there are two autonomous political entities in the island ultimately evolving into two independent states" (Speech, World Turkic Symposium, New York).

(4) Mr. Denktash stated to the illegal Bayrak Broadcasting Station on 10 May 1994:

"... it is impossible to establish a federation ..."

11. Let us therefore address ourselves to the real problem, which is none other than the lack of political will. If we at this time decide to ignore this fact, so boldly stressed by you in your report of 30 May 1994, we are missing the opportunity of facing for the first time the hard realities of why all the initiatives by you and your predecessors have failed.

12. We strongly believe and urge the Security Council that, in its endeavour to answer the question as to how they can help to build political will, the decision should be to start assessing the general situation and to enter into a consultation process for building an agenda of issues that should be considered and which would aim at creating the much-needed political will now lacking on the Turkish side. Such an agenda should include matters relating to security, demilitarization, the issue of settlers, basic principles, guarantees and any other such ideas that could be suggested. This process of discussions should proceed with the continued engagement of the Security Council, culminating in the holding of an international conference on Cyprus.

13. It would be detrimental to the effectiveness of all efforts if at this time we lose sight of the real issue before us and do not take a fresh approach and new initiatives that would help us and would open new possibilities for effectively trying to build political will on the Turkish side for a solution. Otherwise, we will be fuelling and facilitating Mr. Denktash's continued intransigence which, as numerous provocative statements made recently show, knows no bounds. Characteristically, speaking to the mass media recently, Mr. Denktash stated:

(a) "A federal solution in Cyprus is not possible any longer. He said that the United Nations Security Council was making a great error and bringing the two communities together by a superficial agreement would lead to an inevitable disaster". (Anatolia News Agency, 27 June 1994)

(b) "I urge all the sections of the Turkish Cypriot community to stand up with the TMT spirit" [T/C terrorist organization]. (Kibris, 25 June 1994)

14. In a few days 20 years will have been completed since the Turkish military invasion of 1974, with no prospect for a solution to the Cyprus problem in sight.

15. Bearing in mind this lack of progress towards a solution, one cannot but appreciate the great disappointment of the people of Cyprus who for 20 whole years have lived under the conditions of the continued occupation of 37 per cent of their land by the Turkish troops, which, contrary to all United Nations resolutions, instead of leaving Cyprus have been building up their strength, now estimated to be about 35,000 troops with an enormous military capacity, turning the occupied part of Cyprus, as you mention in your report, into one of the most highly militarized areas in the world.

16. During these 20 years of occupation one third of the population of Cyprus has continued to be prevented, by the Turkish occupation forces, from returning to their homes while at the same time the influx of illegal Turkish settlers continues unabated and, according to reports in the Turkish Cypriot press, have reached the staggering figure of over 90,000. Throughout these 20 years the people of Cyprus have also had to face the continuous provocations of Mr. Denktash supported by Ankara.

17. I hope that the Security Council will at long last want to address the key issue of the Cyprus problem which is the continued Turkish occupation and military build-up. This issue is undoubtedly the primary cause for the lack of political will which you have identified in your report as the reason for the failure of all efforts to date.

(Signed) Glafcos CLERIDES
President of the Republic of Cyprus

UNITED
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Security Council

Distr.
GENERAL

S/1994/795
5 July 1994
ENGLISH
ORIGINAL: FRENCH

LETTER DATED 5 JULY 1994 FROM THE PERMANENT REPRESENTATIVE OF FRANCE TO THE UNITED NATIONS ADDRESSED TO THE SECRETARY-GENERAL

You will find attached, in implementation of paragraph 10 of Security Council resolution 929 (1994) of 22 June 1994, the first report on the implementation of Operation "Turquoise". I should be grateful if you would have this letter as well as the annex to it circulated as an official document of the Security Council.

(Signed) Jean-Bernard MÉRIMÉE

Annex

Operation "Turquoise"

1. Troop contingent

The troop contingent for operation "Turquoise" has been placed under the command of General Lafourcade, who has at his disposal an inter-service theatre command post (PCIAT), which has been established in Goma and is linked to the Paris Inter-Service Operational Centre.

The troop contingent is made up of the following components:

(a) A north forces subgroup composed of three combat units in Kibuye;

(b) A south forces subgroup made of two combat units in Cyangugu;

(c) A specialized subgroup consisting of four units in Bukavu;

(d) A detachment of fighter aircraft in Kisangani;

(e) Three transit bases in Bangui, Libreville and Douala.

The troop contingent currently numbers 2,300 French soldiers and 32 Senegalese soldiers.

2. Composition of the Force (expected strength)

2.1 Inter-service means

(a) An inter-service command post (PCIAT - 305 troops);

(b) A rapid intervention military medical unit (EMMIR - 46 troops);

(c) A specialized detachment with five helicopters (220 troops);

(d) Three detachments of the Armed Forces Petrol Service (35 troops).

2.2 Means of the Air Force and Navy

A unit of four Mirage F1CR, four Mirage F1CT, one Atlantic, two C135 FR, two Casa 235, five tactical cargo aircraft (C130, C160), two SA330 (SAR) helicopters. Total strength is 340 troops.

2.3 Means of the Army

(a) Four motorized infantry companies (580 troops);

(b) A 12-vehicle light armoured car squadron (130 troops);

(c) A six-piece heavy mortar section (70 troops);

(d) An Engineers section (25 troops);

(e) A logistical support battalion that has been partially dispatched and is being deployed (expected strength - 450 troops);

(f) A detachment of Army light aircraft (ALAT) with three Puma helicopters (60 troops);

(g) A logistical support battalion that has been partially dispatched and is being deployed (expected strength - 450 troops);

(h) A detachment of Army light aircraft (ALAT) with three Puma helicopters (60 troops);

(i) Two tactical headquarters (62 troops);

(j) A command and service company (150 troops).

2.4 Means of the National Gendarmerie

A provost detachment (10 troops).

2.5 Foreign troop strength

A Senegalese infantry section (32 troops).

Other units provided by various African countries could be integrated into the Force. A Belgian advanced surgical unit is expected.

3. Sites and method of deployment

Initially installed in Goma and Bukavu on 22 June 1994, the Force subsequently reconnoitred several main routes:

(a) In the north, from Goma towards Kibuye and the Ndaba pass;

(b) In the south, from Bukavu in the area of the Nyugwe forest and as far as Gikongoro and Butare.

The operation consisted of:

(a) Preliminary actions (measures to alert and pre-position forces in central Africa) from 16 to 21 June 1994;

(b) Initial actions:

(i) Establishment of an advanced operational base in Goma and an air platform in Kisangani from 21 to 24 June 1994;

(ii) Reconnaissance of refugee camps in Cyangugu and western Rwanda from 22 to 25 June 1994;

(iii) Progressive deployment of the Force on the aforementioned advancement routes from 24 June to 4 July 1994.

4. Evaluation of the situation

The humanitarian mission entrusted to France is proving to be delicate, particularly in the centre and the south of the area reconnoitred by the "Turquoise" Force.

Until 2 July 1994, our troops had been able to operate without incident within the government zone from the Zairian towns of Goma and Bukavu.

Subsequently, the advance by the Rwandese Patriotic Front (RPF) led to a further flow of refugees. This made us define a safe humanitarian zone for the refugees within the Cyangugu-Kibuye-Gikongoro triangle.

The humanitarian problem in this zone is today assuming considerable dimensions, which require the involvement of the entire international community. Hundreds of thousands of displaced Tutsi and Hutu persons require emergency assistance. The protection provided by France should make it possible to provide such assistance as speedily as possible.

5. Humanitarian actions undertaken

5.1 Protection and organization of refugee camps

The "Turquoise" Force is carrying out action to provide protection around two camps:

5.1.1 Nyarushishi, an already existing camp containing 8,000 persons (Tutsi). Protection is being provided by the Rwandese Armed Forces (RAF) and soldiers from the "Turquoise" Force (one section).

5.1.2 Biserero, a camp set up and protected by French forces (1,000 Tutsi as of 1 July).

5.2 Humanitarian activities

5.2.1 General situation

Since the arrival of the "Turquoise" Force in Rwanda, the number of refugees spread out among more than 50 camps in the government zone is estimated at 850,000.

In the south of the country, many refugees are moving towards Gikongoro (westward movement) and towards Burundi (southward movement).

During his visit to the area, Mr. Arturo Hein, Director of the United Nations Emergency Office for Rwanda (stationed in Nairobi), gave a very favourable assessment of the mission and operating methods of Operation "Turquoise".

5.2.2 Actions carried out

Establishment of a rapid-intervention military medical unit (EMMIR) in Cyangugu (as of 5 July).

Delivery of 37 tons of humanitarian aid from the French Government and its distribution in the Kibuye and Gikongoro regions. Four hundred tons are expected in the next few days.

Evacuation of 1,325 persons.

The Western European Union has been requested to provide the following means:

(a) A reserve of 35 tons of medicine (renewable every three weeks);

(b) 400 tons of non-perishable foodstuffs;

(c) Clothing and blankets for 200,000 persons.

Flagrant human rights violations have been directly observed by French soldiers and have been reported by the civilian population. Thus, the "Turquoise" forces discovered mass graves in the Cyangugu and Kibuye regions. Furthermore, bodies likely to be of persons of Tutsi origin were found near Biserero.

All relevant information collected will subsequently be transmitted to the experts on the Commission of Inquiry established under Security Council resolution 935 (1994) of 1 July 1994 and to the Special Rapporteur.

6. Assessment of the implementation of the operation and possible difficulties to be encountered

Operation "Turquoise" is being implemented in accordance with Security Council resolution 929 (1994).

The French forces have demonstrated impartiality in the field by rescuing many Hutu and Tutsi Rwandese from certain death. This impartiality is beginning to be recognized by the RPF, which permitted the evacuation of 1,000 persons from Butare, even though a minor incident took place.

Certain difficulties remain. For the time being, non-governmental organizations and international institutions are doing very little to take over work carried out by the "Turquoise" forces, particularly in the south. In this field, as in the area of participating in the logistical support for our intervention, few promises have been carried out. While our contingent serves

to deter the militias and armed forces involved in the conflict, it is still insufficient in view of the number of displaced persons to be assisted.

Furthermore, the difficulties involved in controlling the extremely tense military situation are not insignificant. Thus, possible hostility on the part of the RAF and the Hutu militias against our contingent may increase the dangers which our forces are already facing from RPF. Participation by third countries in the operation would constitute appreciable assistance to our efforts.

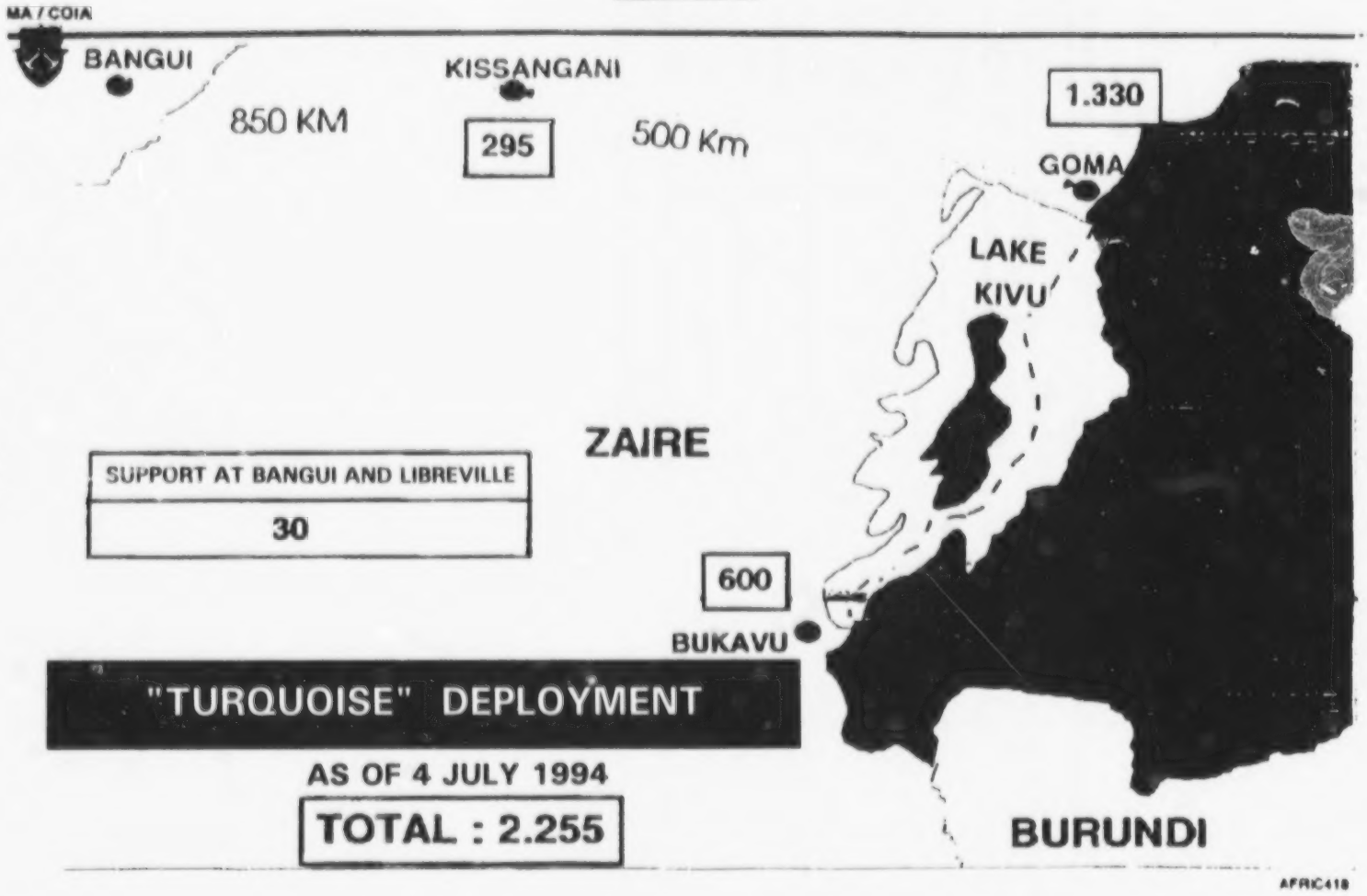
Lastly, the military effort borne almost entirely by France could not be extended without the serious prospect of relief by UNAMIR II. Most of the contribution offers are still uncertain or accompanied by conditions or time-limits that are incompatible with the taking over of our mission in the next two months. France therefore calls upon all Member States to ensure that the deployment of the reinforced UNAMIR is speedily carried out.

Appendix I

Evacuations carried out (as of 4 July 1994)

Date	Place of removal	To	Persons concerned
28 June	Kibuye	Goma	35 nuns 8 orphans
29 June	Kibuye	Goma	1 nun
30 June	Gishyita	Goma	94 Tutsi
2 July	Butare	Goma	16 nuns
2 July	Kibuye and Butare	Goma and Bukavu	130 civilians
3 July 3 July 3 July	Butare Butare Butare	Burundi	262 persons 700 TDH orphans 30 nuns
4 July	Gikongoro	Goma	14 persons 3 nuns
	North Kigeme	Gikongoro	1 nun 31 Tutsi
Total			1 325

Appendix II


MA / COIA
BANGUI
KISSANGANI
850 KM
295
500 Km
1.330
GOMA
LAKE
KIVU
ZAIRE
SUPPORT AT BANGUI AND LIBREVILLE
30
600
BUKAVU
"TURQUOISE" DEPLOYMENT
AS OF 4 JULY 1994
TOTAL : 2.255
BURUNDI
AFRIC418

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Security Council

Distr.
GENERAL

S/1994/796
6 July 1994
ENGLISH
ORIGINAL: ARABIC

LETTER DATED 5 JULY 1994 FROM THE CHARGE D'AFFAIRES A.I.
OF THE PERMANENT MISSION OF IRAQ TO THE UNITED NATIONS
ADDRESSED TO THE SECRETARY-GENERAL

On instructions from my Government, I have the honour to inform you that, as part of a series of actions aimed at hindering Iraq's sincere efforts to create a climate of mutual confidence based on the principles of good neighbourliness and non-interference in the internal affairs of States and in accordance with its policies of giving currency to accusations and fallacies, the Government of the Islamic Republic of Iran has recently sought to insinuate the name of Iraq into the matter of the bombing incident that took place in the Iranian city of Mashhad on 20 June 1994.

The Government of the Republic of Iraq vehemently denies the Iranian claims and allegations and affirms that it had no association, direct or indirect, with the bombing incident at the Imam al-Rida mausoleum in Mashhad on 20 June 1994. It expresses its disapprobation of the deliberate attempt by the Iranian Government to bring Iraq's name into the matter.

On numerous occasions and by a variety of means, the Iraqi Government has clearly expressed its interest in and its sincere desire for a settlement of unresolved issues with the Iranian side so as to serve the legitimate interests of both countries, and it has made sustained efforts in this regard. Accusations such as this are not in keeping with the sincere desire and worthy intentions expressed by the Republic of Iraq with respect to its relations with the Islamic Republic of Iran.

In this context, the Government of Iraq reminds the Government of the Islamic Republic of Iran that the charge made against Iraq in connection with this incident coincides with such actions as the numerous grave violations of the sovereignty of the Republic of Iraq and the integrity of its territory and territorial waters recently committed by the Iranian authorities for the purpose of hampering Iraq's sincere efforts to create a climate of mutual confidence based on the principles of good-neighbourliness and non-interference in the internal affairs of States.

That the Iranian Mojahedin-e Khalq organization is present in the territory of Iraq does not necessarily mean that Iraq has any link or connection with the functioning or activities of the organization. Iran is well aware that this

organization maintains a presence and engages in activities in many other countries, but it does not attempt to link the names of these countries with the incident in question as it has done in the case of Iraq, thereby indicating that Iran has preconceived schemes in this connection. There is also the attempt to mislead Iranian and international public opinion by deflecting attention away from the true situation of Iran and the fact that it harbours perfidious and deluded lackeys who use Iranian territory as a base and a launching point for terrorist activities against Iraq and supplies them with the funds and weapons needed to achieve their destructive objectives directed against the people of Iraq.

The Government of the Republic of Iraq, reaffirming its commitment to and respect for the principles of good-neighbourliness and the norms governing international relations, requests you to intervene as required in accordance with the purposes and principles of the United Nations in order to urge Iran to comply with those principles, to advance the interests of both countries, to desist from its violations of the principles and norms governing relations of good-neighbourliness and to halt its repeated violations of Iraq's international boundaries, its airspace and its territorial waters.

I should be grateful if you would have this letter circulated as a document of the Security Council.

(Signed) Saeed H. HASAN
Chargé d'affaires a.i.

UNITED
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Security Council

Distr.
GENERAL

S/1994/797
30 June 1994

ORIGINAL: ENGLISH

NOTE BY THE SECRETARY-GENERAL

1. On 6 May 1994, the Security Council adopted resolution 917 (1994), in view of the failure of the military authorities in Haiti to comply in full with the relevant resolutions of the Council and the provisions of the Governors Island Agreement.

2. In resolution 917 (1994) the Council decided that, acting under Chapter VII of the Charter of the United Nations, starting no later than 2359 hours Eastern Standard Time on 21 May 1994, all States should adopt the measures set forth in paragraphs 6 to 10 of the resolution. The Council would consider progressive suspension of the measures contained in the present resolution and earlier relevant resolutions, based on progress in the implementation of the Governors Island Agreement and the restoration of democracy in Haiti.

3. The text of resolution 917 (1994) was transmitted to the Ministers for Foreign Affairs of all States upon its adoption.

4. Under the provisions of paragraph 13 of the same resolution, the Security Council requested all States to report to the Secretary-General by 6 June 1994 on the measures they have instituted in implementation of the measures contained in the present resolution and earlier relevant resolutions.

5. As at 28 June 1994, 18 replies have been received pursuant to paragraph 13 of resolution 917 (1994). Each of the replies has been issued as a document of the Security Council in chronological order of their receipt, as indicated below:

Venezuela	25 May 1994	S/1994/663
Argentina	26 May 1994	S/1994/655
United States of America	6 June 1994	S/1994/689
Sweden	6 June 1994	S/1994/696
Turkey	6 June 1994	S/1994/697
Finland	6 June 1994	S/1994/698

United Kingdom of Great Britain and Northern Ireland	6 June 1994	S/1994/699
Norway	6 June 1994	S/1994/731
Lebanon	9 June 1994	S/1994/749
Slovakia	10 June 1994	S/1994/722
Portugal	14 June 1994	S/1994/739
Dominican Republic	14 June 1994	S/1994/758
Myanmar	15 June 1994	S/1994/754
Colombia	15 June 1994	S/1994/755
Malta	16 June 1994	S/1994/756
Australia	17 June 1994	S/1994/736
Jamaica	20 June 1994	S/1994/757
Bulgaria	20 June 1994	S/1994/759